

## **EXHIBIT 2**

Case No. 14-CV-704-GKF-JFJ

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA  
3  
4 UNITED STATES OF AMERICA,  
5 Plaintiff,  
6 and  
7 OSAGE MINERALS COUNCIL,  
8 Intervenor-Plaintiff,  
9 vs. Case No. 14-CV-704-GFK-JFG  
10 OSAGE WIND, LLC;  
11 ENEL KANSAS, LLC; and  
12 ENEL GREEN POWER  
13 NORTH AMERICA, INC.,  
14 Defendants.  
15  
16

17 VIDEO ZOOM DEPOSITION OF KIMBERLEE CENTERA  
18 TAKEN ON BEHALF OF THE INTERVENOR-PLAINTIFF  
19 ON MAY 14, 2021, BEGINNING AT 10:49 A.M.  
20 REPORTER PRESENT IN YUKON, OKLAHOMA  
21  
22

23 APPEARANCES:  
24  
25 On behalf of the PLAINTIFF

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35 THE VIDEOGRAPHER: Jake Underwood  
36 REPORTED BY: Janna Pirtle, CSR, RPR  
37

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1 STIPULATIONS

2 It is stipulated that the deposition of  
3 KIMBERLEE CENTERA may be taken pursuant to  
4 agreement and in accordance with Federal Rules  
5 of Civil Procedure, on May 14, 2021, before  
6 Janna Pirtle, Certified Shorthand Reporter.

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10 Will counsel please state their  
11 appearances for the record.

12 MS. NAGLE: Yes, good morning. My name  
13 is Mary Kathryn Nagle. I'm a partner at  
14 Pipestem & Nagle, and I represent the  
15 intervenor-plaintiff, the Osage Minerals  
16 Council. With me here today is my colleague,  
17 Shoney Blake, also from Pipestem & Nagle.

18 MR. ASHWORTH: Stuart Ashworth on behalf  
19 of the U.S. Attorney's office. I also have  
20 Cathy McClanahan, an attorney with the U.S.  
21 Attorney's office, Michelle Hammock, and  
22 Chistina Watson, paralegals for the  
23 U.S. Attorney's office.

24 MS. STEVENSON: Sarah Stevenson with the  
25 Modrall Sperling Law Firm on behalf of

1 defendants, Osage Wind, LLC; ML Kansas, LLC;  
2 Enel Green Power North America, Inc. Also  
3 online today for defendants are Lynn Slade, Ryan  
4 Ray, and Dominic Martinez. I will state for the  
5 record that I am here in the same room as the  
6 witness, Ms. Kimberlee Centera. We're sitting  
7 about eight feet apart, and we will be using her  
8 microphone.

9 THE VIDEOGRAPHER: Okay. The court  
10 reporter will now swear in the witness.

11 KIMBERLEE CENTERA,  
12 having been first duly sworn, deposes and says  
13 in reply to the questions propounded as follows:

14 DIRECT EXAMINATION

15 BY MS. NAGLE:

16 Q Great. Okay. Good morning, Ms.  
17 Centera. My name is Mary Kathryn Nagle, and I  
18 will be asking you a few questions today. Just  
19 just before we get started here, can you go  
20 ahead and state your full name and spell it for  
21 the court reporter, please?

22 A Kimberlee Centera, K-i-m-b-e-r-l-e-e,  
23 C-e-n-t-e-r-a.

24 Q Thanks so much. And where are you  
25 located today?

1 A I am located in San Diego, California.

2 Q Wonderful. And just so you know, I will  
3 be asking lots of questions and showing you some  
4 exhibits on the screen. Your counsel, who's  
5 there in the room, may have some of these  
6 documents, for instance, your report, in which  
7 case, you know, if you want to look at it on the  
8 screen or, you know, in print, I think either is  
9 fine.

10 If I ask you a question that you don't  
11 understand, please feel free to let me know. If  
12 you need me to repeat a question, you can let me  
13 know. Also, you know, any time you need to take  
14 a break, we can take a break. You know, it's  
15 really -- I want you to be comfortable, and I  
16 don't want you to feel like we have to keep  
17 going if we need a bathroom break at any point  
18 in time.

19 So jumping right in here, have you given  
20 a deposition before?

21 A I have.

22 Q And have you ever testified in court  
23 before?

24 A No, I have not.

25 Q Do you recall, how many times have you

1       **given a deposition? Do you know?**

2       A     One other time.

3       Q     **And do you recall the name of the case**  
4     **or the litigation that was -- that you gave a**  
5     **deposition in?**

6       A     I don't recall the name of the case. It  
7     was with a prior employer several years ago, and  
8     there was a case filed by one of the landowners  
9     in connection with a project, and so they took  
10    my deposition in connection with that.

11      Q     **And so in that instance, you -- were you**  
12     **deposed as an expert, or was it --**

13      A     No.

14      Q     **Okay. Fact witness?**

15      A     Correct.

16      Q     **All right. Today do you have a**  
17     **smartphone with you?**

18      A     I do, yes.

19      Q     **And where is the phone located?**

20      A     It's to the left of me. It's turned  
21     over facedown on the table.

22      Q     **Okay. And are there any other**  
23     **electronic devices that you have with you during**  
24     **this deposition, other than the laptop you're**  
25     **using?**

1 A No.

2 Q And do you agree to not text or use any  
3 other messaging system while we are recording  
4 this deposition?

5 A I do.

6 Q Okay. And I understand that Sarah  
7 Stevenson is in the room with you. Is there  
8 anyone else in the room with you at this time?

9 A No, there's not.

10 Q And do you have any printed documents  
11 with you this morning?

12 A I do.

13 Q And do you -- can you identify what  
14 documents you do have with you?

15 A Sure. Is it -- is it okay if I just --  
16 I tell you --

17 Q Sure. Absolutely.

18 A I have a printed copy of my report, and  
19 then I have the sandy soil permits. I have the  
20 John Pfahl reports, and I have a copy of the  
21 interrogatories, a copy of the Tenth Circuit  
22 opinion, and the -- not -- the FTI report. Not  
23 the complete report with all the appendices, but  
24 just the report itself without the appendices,  
25 and then the Roadrunner Solar Pharoah surface

1 use agreement.

2 Q Okay. All right. And how many times  
3 have you been retained as an expert witness in a  
4 litigation?

5 A This is the first time.

6 Q Okay. Prior to this litigation, have  
7 you ever been paid to form an opinion where  
8 minerals were extracted in violation of federal  
9 law?

10 MS. STEVENSON: Object to form.

11 THE WITNESS: Never.

12 Q (By Ms. Nagle) Have you, prior to this  
13 litigation, ever been hired to form an opinion  
14 where minerals were extracted from an Indian  
15 trust property in violation of federal law?

16 MS. STEVENSON: Object to form.

17 THE WITNESS: Never.

18 Q (By Ms. Nagle) Have you ever been paid  
19 to form an opinion related to 25 CFR Part 214?

20 A No.

21 Q Have you ever been paid to form an  
22 opinion related to 25 CFR Part 211?

23 A No.

24 Q Have you ever been paid to form an  
25 opinion related to the treaty rights of a

1       **federally recognized tribal nation?**

2           A    And I'm sorry, Mary Kathryn. Could you  
3   repeat that? What kind of rights?

4           Q    **Sure. Have you ever been paid to form**  
5   **an opinion related to the treaty rights of a**  
6   **federally recognized tribal nation?**

7           A    No.

8           Q    **Have you ever been paid to form an**  
9   **opinion related to the Osage Allotment Act of**  
10   **1906 or its amendments?**

11          A    No.

12          Q    **Prior to this litigation, have you ever**  
13   **been paid to form an opinion regarding whether**  
14   **to obtain a lease to mine from a federally**  
15   **recognized tribal nation?**

16          A    No.

17          Q    **Prior to this litigation, have you ever**  
18   **been paid to form an opinion regarding the**  
19   **reasonableness of a decision to obtain a mining**  
20   **lease where the United States instructed the**  
21   **decision-maker to obtain a mining lease?**

22           MS. STEVENSON: Object to form.

23           THE WITNESS: No.

24          Q    **(By Ms. Nagle) And just overall, what**  
25   **did you do to prepare for your deposition today?**

1           A    I reviewed some of the materials that I  
2    -- that I mentioned that I have here with me. I  
3    -- to refresh my memory, I reviewed those  
4 materials.

5           Q    **And did you meet with counsel to prepare**  
6 **for today's deposition?**

7           A    I did.

8           Q    **And who did you meet with, specifically?**

9           A    Sarah Stevenson, Lynn Slade, and Ryan  
10 Ray.

11          Q    **And did you meet -- did you discuss**  
12 **today's deposition with anyone else besides**  
13 **those three individuals?**

14          A    No, I did not.

15          Q    **Did you look at any documents to prepare**  
16 **for today's deposition that you didn't look at**  
17 **to prepare for your report?**

18          A    No.

19          Q    **Okay. And did you listen to the**  
20 **deposition of Robert Freas in this litigation?**

21          A    I did not.

22          Q    **Okay. Did you read his reports?**

23          A    I did not.

24          Q    **Do you have an opinion with regards to**  
25 **his report?**

1 A I don't.

2 Q Okay. Did you listen to the deposition  
3 of Steven J. Hazel in this litigation?

4 A I did.

5 Q And do you agree with his findings?

6 A I don't. No, I do not.

7 Q And why do you not agree with his  
8 findings?

9 A I -- I don't agree with the basis on  
10 which he does his valuation. He uses the  
11 surface leases as the basis for determining the  
12 compensation, and in my years of experience of  
13 working in renewables, which is almost 30 years,  
14 I've never seen any kind of compensation even  
15 contemplated, so I -- I have no -- there's no  
16 basis in reality, in terms of my experience, to  
17 calculate compensation on that basis.

18 Q Just going over some of your general  
19 experience in the field, I would love to hear a  
20 little bit about this organization you work  
21 with. What is Women in Renewables and  
22 Sustainability?

23 A Women in Renewables and Sustainability  
24 is an organization based in the Bay area that  
25 promotes the advancement of women in -- you

1 know, generally in renewables, and just, you  
2 know, sustainability at large, to try to  
3 encourage women, you know, career paths,  
4 education, that sort of thing.

5 **Q And what is your role in the**  
6 **organization?**

7 A I am in an advisory role. I also have  
8 presented to them on materials. I've spoken to  
9 them on negotiations, so I've given them  
10 presentations and on leadership and  
11 negotiations.

12 **Q Now, I'd like to turn to your expert**  
13 **report in this litigation, which I am going to**  
14 **see if I can figure out how to share my screen**  
15 **so that -- let's see here. Okay. So now we**  
16 **should all be seeing this. This is -- do you**  
17 **recognize this as your expert report?**

18 A I -- I do, yes.

19 **Q Great. So I will mark this as**  
20 **deposition Exhibit Number 35.**

21 MS. NAGLE: I believe we're at Number  
22 35, but someone correct me if I'm wrong.

23 **Q (By Ms. Nagle) So this'll be marked as**  
24 **Exhibit 35, and if we could turn to Appendix B**  
25 **-- let me see if -- still -- here we go.**

1       **Appendix B, great. So I'm going to turn our**  
2       **attention to Appendix B and, specifically, your**  
3       **CV in here.**

4           **And if you look at this, does Appendix B**  
5       **accurately reflect your background and**  
6       **qualifications?**

7       A     Can you scroll down a little bit more?

8       It --

9       Q     **Sure. Absolutely.**

10      A     If it's the one that was in my report,  
11      then it should, yes. Yes.

12      Q     **I can keep scrolling down.**

13      A     Thank you. That appears to be correct.

14      Q     **Okay. Great. Are you currently a**  
15      **California licensed real estate broker?**

16      A     I am.

17      Q     **And have you received any training**  
18      **regarding Indian trust properties as a condition**  
19      **of obtaining or maintaining your license?**

20      A     No, I have not.

21      Q     **And are you the president and founder of**  
22      **TerraPro Solutions?**

23      A     I am.

24      Q     **How long have you been in your current**  
25      **position?**

1           A    Since about 2012. Since 2012 I started  
2   my consulting business. The official company,  
3   TerraPro Solutions, has been in existence for  
4   about four years, three years, four years. We  
5   changed the name of the company a few years ago.

6           **Q    And what was the name of the company  
7   before the name change?**

8           A    Before the name change, it was Centera  
9   Land and Title and about, I want to say, three  
10   years ago, we changed it to TerraPro Solutions.

11          **Q    Okay. Thank you. And how long have you  
12   been in your current position?**

13          A    I basically founded the company in 2012.

14          **Q    Okay. And what are your job  
15   responsibilities?**

16          A    I manage the company. I, you know, run  
17   the company and work with, you know, different  
18   people, and I have several people who work for  
19   me. And basically, I'm the -- you know, the  
20   risk expert, if you will, so I work on a lot of  
21   different projects and consult on different  
22   projects for developers in the utility scale  
23   space for energy.

24          **Q    Uh-huh. And when you state that you  
25   work in risk, can you help explain a little bit**

1 more what risk entails?

2       A Well, we're -- our company is -- we're  
3 finance experts, so we help our clients prepare  
4 for financing on renewable energy projects, so  
5 for debt financing in connection with  
6 construction, or it could be tax equity  
7 financing. And so we will go in and take a look  
8 at the documentation, so we'll look at leases,  
9 we'll look at title reports.

10       We will -- we have a lot of reports that  
11 we prepare for our clients to help them  
12 understand the different risk profile for a  
13 project. So what that would mean is different  
14 issues that might be raised by counsel in  
15 connection with the financing.

16       And because we have a lot of financing  
17 experience and that's what we specialize in, we  
18 have a good understanding of the kinds of things  
19 that attorneys are going to focus on for  
20 purposes of due diligence. So we help our  
21 clients understand what those issues are, and  
22 then we help them work out a strategy to solve  
23 them.

24       Q And would some of the issues that  
25 you-all would look at in doing this due

1       diligence, would some of those issues relate to  
2       potential leases that would need to be obtained  
3       from the government?

4           A    It could, yes.

5           Q    In your experience, have you ever  
6       advised a client on whether or not to obtain a  
7       lease from a tribal nation?

8           A    Just generally? Yes.

9           Q    And can you -- can you identify which  
10      tribal nations you have advised in relation to?

11          A    I can't tell you a specific tribe, but,  
12      I mean, you know, one of the things that we do  
13      is get involved in early stage development.

14      Early stage development includes site control,  
15      so if we are working with clients to identify  
16      the ownership of a particular site, and that  
17      would include a tribe, then we would absolutely  
18      be working with them on that lease, potentially,  
19      and negotiating that lease. So we would get  
20      involved, absolutely.

21          Q    Do you -- do you have any recollection  
22      of an instance in which you advised on the  
23      ownership of a particular site where a tribal  
24      nation owned the mineral estate itself?

25          A    And I'm sorry. With regard to a lease,

1 are you saying?

2 Q Sure. Or, you know, doesn't have to  
3 necessarily be a lease, but you mentioned  
4 advising on the ownership of a particular site,  
5 and I'm just wondering if you recollect whether  
6 you've ever worked or advised on an instance  
7 where a tribal nation did own the mineral estate  
8 at a particular site?

9 A Yes, yes.

10 Q Can you name those specific examples?

11 A Not without looking at material. You  
12 know, we work on so many different projects that  
13 I can't tell you a specific project at this  
14 moment.

15 Q Okay. Do you recall whether -- in those  
16 instances where the tribal nation owned the  
17 mineral estate, do you recall whether your  
18 advice was to get a lease from the tribal nation  
19 before mining or whether you advised to not get  
20 a lease from the tribal nation before mining?

21 Do you recall?

22 MS. STEVENSON: Form.

23 THE WITNESS: Well, yeah, I think if  
24 you're talking about mining, you're talking  
25 about something different; right? Because

1 normally in our work, we're not entering into  
2 mining leases. That doesn't come up. Whether  
3 it's tribes or in any kind of a severance  
4 situation, we're not entering into leases.

5 We might enter into accommodation  
6 agreements or surface use agreements, those  
7 types of things, but I've not ever seen a lease  
8 negotiated for purposes of mining, when it comes  
9 to tribal or otherwise.

10 Q (By Ms. Nagle) So in your personal work  
11 and professional work experience, you do not  
12 have experience negotiating a mining lease with  
13 a tribal nation; is that correct?

14 A That's correct.

15 Q And before working and before founding  
16 TerraPro Solutions, were you at AES Corporation?

17 A Yes, I was.

18 Q And how long were you there?

19 A I was at AES Corporation from 2005 until  
20 2012.

21 Q And what were your job responsibilities  
22 during your time there?

23 A I was vice president of real estate, and  
24 I ran the real estate division of the company  
25 and managed a team of people. And it was our

1 responsibility to acquire so -- establish site  
2 control for all of our sites across the United  
3 States and, in some cases, I did a little bit of  
4 work in South America. But I'm predominantly in  
5 the U.S., and we were responsible for all of the  
6 acquisition of all the sites and all --  
7 responsible for all the financings and all the  
8 management of all the real estate and title  
9 rights associated with the projects.

10 Q **And were most of those projects related**  
11 **to wind power, or were there other forms of**  
12 **renewables that you worked on as well?**

13 A Other forms of renewables.

14 Q **In addition to wind power, what else do**  
15 **you have experience in?**

16 A The solar. We worked in solar as well,  
17 solar development.

18 Q **And before AES were you at SeaWest**  
19 **WindPower Corporation?**

20 A I was, yes.

21 Q **And how long were you there?**

22 A I started there in about 1993, and  
23 SeaWest WindPower was acquired by AES  
24 Corporation in 2005, so until 2005 when we were  
25 acquired by AES.

1           **Q    And what were your job responsibilities**  
2           **at SeaWest WindPower?**

3           A    At SeaWest WindPower, I had a similar  
4           position. I was responsible for all of the real  
5           estate acquisitions and title. We did all the  
6           site control, site identification, and then all  
7           of the financing work around the -- for the  
8           projects, and predominantly all wind. It was  
9           all wind with SeaWest WindPower.

10          **Q    And before that, you were at Jennings,**  
11          **Engstrand & Henrikson; is that correct?**

12          A    Yes.

13          **Q    And how long were you there?**

14          A    I want to say four or five years,  
15           something like that.

16          **Q    Okay. And what were your job**  
17          **responsibilities there?**

18          A    I was a paralegal. I worked for one of  
19           the partners in the real estate trusts, estate  
20           planning, wills, and probate.

21          **Q    Okay. And I'm going to turn to Page 2**  
22          **of your CV and draw your attention to this line**  
23          **here, where it states that you have specialized**  
24          **expertise negotiating with public and private**  
25          **entities and utilities including -- and you list**

1 several. And I see here that BIA is listed; is  
2 that correct?

3 A Right.

4 Q Does BIA stand for Bureau of Indian  
5 Affairs?

6 A It does, yes.

7 Q Could you please describe for us what  
8 special expertise you have in negotiating with  
9 BIA?

10 A I worked on a project in -- it wasn't --  
11 it was in the midwest. I don't remember exactly  
12 where it was, but we worked on negotiations of a  
13 lease with the -- with the BIA. It was very  
14 early stage. A lot of our work is early stage,  
15 and so I was involved in those initial  
16 negotiations with the BIA.

17 The client at the time ended up, for  
18 different reasons, abandoning the project; there  
19 were other things that -- that happened, so we  
20 did not complete those negotiations, so the  
21 leases weren't all entered into. But I was  
22 involved in the formulating of the lease and  
23 some of the back-and-forth negotiations,  
24 initially, with the BIA.

25 Q Now, those leases that you were

1       **negotiating, I realize they didn't come to**  
2       **fruition, but were they mineral leases?**

3           A    They were not.  No, they were for site  
4       control, so they would have been for the  
5       development of the -- of the wind project.

6           Q    **And do you remember, roughly, what year**  
7       **those negotiations would have been taking place?**

8           A    I'm going to guess and say maybe 2013.

9           Q    **Okay.  Do you remember the names of any**  
10       **individuals that you worked with at BIA or spoke**  
11       **with?**

12          A    I don't.  You know, at any given time,  
13       our -- we -- you know, we have one client where  
14       we worked on 39 projects in one year, so it's  
15       hard for me to recollect specific names and that  
16       type of thing.

17          Q    **Sure.  I can definitely understand that.**  
18       **Let's see.  So let's -- I'm going to keep moving**  
19       **on here, and let's see if I can find it on here.**  
20       **Yeah, okay, so it looks like we have here,**  
21       **listed in your Appendix B, a large number, a**  
22       **very extensive list of different projects that**  
23       **you've had involvement with.  And so I'm showing**  
24       **you this here on the screen, but do you agree**  
25       **that this is the correct listing of the projects**

1 you've been involved in?

2 A It looks to be correct, yes.

3 Q Okay. And I apologize; I can't hand a  
4 hard copy to you, but I think you have one there  
5 in the room with you, so, hopefully, you can  
6 refer to that as much as you need as well. Out  
7 of all of these projects, do you know how many  
8 were bifurcated where the mineral and surface  
9 estates were separate and actually the surface  
10 estate was subservient to the mineral estate?

11 A You know what? I'd have to go back and  
12 look at them. I can't tell you a percentage.

13 Q That's fine. So you're not -- you're  
14 not sure one way or the other without looking  
15 further just how many of these had a bifurcated  
16 -- okay. Do you know how many of these  
17 projects, if any of them, would have involved  
18 the valuation of minerals?

19 A The valuation of minerals with respect  
20 -- like, what do you mean, the valuation of  
21 minerals?

22 Q Well, so I understand that your expert  
23 report, and please correct me if I'm wrong, is  
24 taking issue with Mr. Hazel's report in saying  
25 that his valuation of the minerals of the lease

1 in this litigation, that the Tenth Circuit  
2 stated defendants are required to obtain, is  
3 unreasonable. And maybe we just -- maybe we  
4 just take a step back and ask, in your expert  
5 opinion, what would be a reasonable valuation  
6 for the minerals that defendants have taken from  
7 the Osage Minerals Council in this case?

8 MS. STEVENSON: Object to form.

9 THE WITNESS: Yeah, I think what we're  
10 -- what we're talking about is the compensation;  
11 right? So I'm not sure that we're talking about  
12 the valuation of the minerals, per se, but I  
13 think what we're talking about is a  
14 compensation; right? So that is what I have  
15 more familiarity with, in terms of the  
16 compensation that would be negotiated between  
17 the parties.

18 So it's not really necessarily based  
19 upon the valuation of the minerals, exactly.  
20 You know, we're not going to go out and try to  
21 evaluate, you know, how many minerals are out  
22 there and what they're worth. It really  
23 pertains more to the -- to the use.

24 So, you know, I work on solar versus  
25 wind, and so a lot of this is negotiated around

1 what is the extent of the availability of the  
2 property. But -- so I'm kind of confused by the  
3 question as to the valuation of the minerals,  
4 just because I don't try to value the minerals,  
5 per se.

6 Q (By Ms. Nagle) Okay. And so -- so in  
7 your expert opinion, compensation for minerals  
8 taken is not equivalent to the actual market  
9 value of the minerals themselves; is that  
10 correct?

11 MS. STEVENSON: Object to form.

12 THE WITNESS: No, not necessarily. In  
13 other words, if you think about some of these  
14 permits that's -- where you value the minerals  
15 so much per ton that's extracted and all of  
16 that, we really don't have those kinds of  
17 conversations. What we -- what we really talk  
18 about is, you know, what is the use going to be,  
19 what is the availability.

20 We will look at the -- you know,  
21 sometimes at what the minerals are, if you have  
22 oil and gas, for instance, and you can do slant  
23 drilling. And so it depends on the makeup of  
24 the minerals, but I don't have someone go out  
25 and try to look at the totality of the estate

1 and say, you know, the mineral estate is worth  
2 this much, so, you know, we're going to make  
3 payments on that basis. It's more of a  
4 negotiation that happens as a result of several  
5 different factors.

6 And in a lot of cases, there's -- you  
7 know, the compensation can be reciprocal rights.  
8 For instance, we do a lot of work where, you  
9 know, the wind farms have to build a lot of  
10 roads. And so if you're going to, you know,  
11 come in and try to explore the minerals, there's  
12 a benefit there of not having to build that  
13 road, for instance. I mean, some of these roads  
14 are very expensive.

15 And so we might work out an arrangement  
16 where, you know, there's no direct compensation  
17 paid, but the parties will have a reciprocal  
18 right for road use. So a lot of times, it's the  
19 function of a negotiation, and there's --  
20 there's value around certain things that -- so  
21 it's not really on the basis of the minerals,  
22 per se, if that makes sense.

23 Q (By Ms. Nagle) I think that -- I think  
24 that makes sense. And so if I take out the word  
25 "valuation" and replace it with "compensation,"

1 out of all these projects, did any of them  
2 involve you or your team undertaking to estimate  
3 how much the compensation from minerals would  
4 be?

5 A So there -- we would -- we would work  
6 out a negotiation on the compensation to be paid  
7 between the parties, yes, yes, if that's what  
8 you're asking.

9 Q And then in those instances where you  
10 were involved in such a negotiation, would that  
11 negotiation take place before the minerals were  
12 mined or after the minerals are mined?

13 MS. STEVENSON: Object to form.

14 THE WITNESS: Yeah, I -- you know, we  
15 don't get involved in the mining of the  
16 minerals, so, you know, that's going to be  
17 something completely separate; right?

18 Q (By Ms. Nagle) Uh-huh.

19 A You know, I think we're not negotiating  
20 mining agreements; right? That's renewables.  
21 We're not in the business of mining; that's not  
22 what we do, so we're not going to put that on  
23 the table. Like I said, the kinds of things  
24 that would be involved in our negotiation would  
25 be the kinds of things that -- actual things

1 that we can provide, like, you know, roads, you  
2 know, the ability to be able to -- if there's  
3 some reciprocity as far as uses and that kind of  
4 thing.

5 I mean, we -- you know, I work a lot on  
6 solar versus wind. With solar and the spacing  
7 of the turbines, you know, typically, I -- you  
8 know, there's no restriction on other uses.

9 That's always been a big benefit of negotiating  
10 wind power. And I've been doing this a very  
11 long time across all different kinds of  
12 properties, so, you know, mining doesn't really  
13 come up. It's not what we do, it's not in our  
14 area of expertise.

15 Q **Did any of these projects in Appendix B  
16 involve mining?**

17 A No, no, none of them involved mining.

18 Q **Did any of them involve a tribal nation?**

19 A Some of them could. I would have to go  
20 back and look at that to be able to tell you  
21 which ones exactly. Again, I work on a lot of  
22 projects, and I -- I don't keep them all in my  
23 head. There's no way I can do that.

24 Q **Sure. But you don't recall right now  
25 any specific project listed here in Appendix B**

1       **that involves a tribal nation; is that correct?**

2           A    Correct.

3           Q    **And do you recall any project listed**  
4   **here in Appendix B where the United States**  
5   **served as trustee?**

6           A    Served as trustee of the -- in what  
7   capacity?

8           Q    **Well, in capacity -- in the capacity as**  
9   **the trustee for Indian trust property.**

10           THE REPORTER:   For what?   Indian?

11           MS. NAGLE:    Indian trust property.

12           THE WITNESS:   Where the United States --  
13   you know, I can't really say that I have.   I  
14   think in most cases, if we're working with  
15   tribal land, we're either working with the tribe  
16   directly or we're interfacing with the BIA.   So  
17   I can't really say that we had a lot of  
18   interface with, you know, the USA as a trustee,  
19   no, I cannot say that.

20           Q    **(By Ms. Nagle) Did any of these**  
21   **projects here listed in Appendix B involve a**  
22   **trespass?**

23           A    No.

24           Q    **And in any of these projects listed here**  
25   **in Appendix B, was the client that you worked on**

1      **behalf advised by the United States to halt**  
2      **construction pending permit approval?**

3                MS. STEVENSON: Object to form.

4                THE WITNESS: No.

5      **Q      (By Ms. Nagle) Were you in -- when you**  
6      **prepared your report for this case, were you**  
7      **informed that defendants had violated federal**  
8      **law and committed a trespass on the Osage**  
9      **mineral estate?**

10               MS. STEVENSON: Object to form.

11               THE WITNESS: I don't know that I  
12          understand that question. I wasn't really  
13          looking at the trespass. You know, I was asked  
14          to look at the FTI report, and really our focus  
15          was the methodology that was used in connection  
16          with that, you know, proposed compensation. So  
17          I can't say that we looked at that at all, no.

18      **Q      (By Ms. Nagle) Did you -- you said you**  
19      **read or you reviewed the Tenth Circuit's**  
20      **decision in this case; is that correct?**

21      A      Certain portions of it, yes, that  
22      pertained to my work, yes.

23      Q      **Did you read the entire Tenth Circuit**  
24      **decision?**

25      A      I can't say that I did, no. I think

1 there were certain pages that I really focused  
2 on that spoke to the definition of mining and  
3 that kind of thing, so that's really what I  
4 focused on.

5 **Q For the sections of the decision, you**  
6 **focused on sections that the attorneys directed**  
7 **you to focus on, or did you decide yourself**  
8 **which sections to focus on?**

9 MS. STEVENSON: Object to form, and  
10 object to the extent it seeks privileged  
11 information.

12 You can --

13 THE WITNESS: What does -- the attorney  
14 suggested there at the beginning, where there's  
15 all the legalese -- you know, they suggested  
16 that I don't necessarily have to read all of  
17 that, so, you know, I didn't, because it didn't  
18 really have bearing on my report.

19 **Q (By Ms. Nagle) What -- and in your**  
20 **expert opinion, what part of the Tenth Circuit**  
21 **opinion did have bearing on your report?**

22 A Do you want me to tell you the pages?

23 Q Sure.

24 A I think I marked them so I could tell  
25 you. I apologize. Just a moment here.

1           **Q    No, take your time.**

2           A    Let's see. I want to say it was Page  
3    18. Page 18 through Page -- I guess it's  
4    through the signatures so --

5           **Q    Okay.**

6           A    Well, pardon me. Hang on just a second.  
7    Page 18 through, really, Page 27 is what I  
8    looked at.

9           **Q    So would that basically be 18 through  
10   the end of the opinion?**

11          A    Yes. Well, let's see. What's -- it  
12    was, yeah, through Page 27, correct.

13          **Q    And based on what you read of the Tenth  
14   Circuit's decision, what is your understanding  
15   of what the Tenth Circuit concluded or decided  
16   in this case?**

17          A    Well, I'm not an attorney, but they  
18   decided that the fact that there was the  
19   crushing of the -- of the limestone, that -- and  
20   I guess there was, you know, really kind of an  
21   ambiguity. But they decided in favor of the  
22   tribe with regard to the crushing of the  
23   limestone, that that constituted mining, and  
24   that there should have been a lease obtained for  
25   that purpose.

1           Q    Okay.  And how -- how did your  
2    **understanding of what the Tenth Circuit decided**  
3    **inform your expert opinion?**

4           A    Besides the fact that I was shocked,  
5    honestly?  Shocked and surprised, to be  
6    perfectly honest, because, you know, I have  
7    many, many years of doing this work, and I've  
8    seen a lot of, you know, turbine foundations and  
9    that kind of thing.  So I think I was just  
10   surprised by the finding of the court that --  
11   you know, so, you know, I -- that isn't  
12   something that I would have anticipated, so I  
13   was surprised by the finding.

14           Q    **So your shock and surprise at the Tenth**  
15   **Circuit's finding impacted your expert report in**  
16   **this case; is that correct?**

17           A    No.  I think what I'm saying is that I  
18    was just surprised at their finding.  You know,  
19    I -- you know, I've worked on a lot of  
20    construction for a lot of projects, and I never  
21    would have imagined that, you know, they would  
22    have made the conclusion that they did, that,  
23    you know, taking that limestone, you know,  
24    crushing it and repurposing -- I guess in my  
25    mind when I think about mining, I think about

1 removing minerals from a site and taking them  
2 off the site and selling them for some purpose.  
3 And with my experience in renewables, I know  
4 that that's not happening, so I think that's  
5 what was, you know, different. That was what  
6 was the surprise.

7 Q Uh-huh, uh-huh. Okay. Let's see here.

8 Q Are all of the expert opinions that you have  
9 formed in this case represented in your expert  
10 report?

11 A Pertaining to this matter, yes, yes.

12 Q Have you been asked to do any additional  
13 work or form any additional opinion since  
14 rendering your expert report in October?

15 A With regard to this case, no, no.

16 Q Okay. Is there anything in your report  
17 that you need to update, supplement, or correct?

18 A Not that I'm aware of at this point, no.

19 Q Excuse me. And I can pull it back up on  
20 the screen. Let me just do that really quick  
21 here. We've got -- okay. Let me share my  
22 screen. So we're looking here at your expert  
23 report, and if I go up to Appendix A, which  
24 lists the documents that you relied on in  
25 rendering your expert report -- we've got here

1 Appendix A, and this is Exhibit 35 that we're  
2 looking at right now. Can you verify that  
3 Appendix A is a complete list of the documents  
4 you relied on in preparing your report?

5 MS. STEVENSON: Object to form.

6 THE WITNESS: Could you -- I'm sorry.

7 Could you scroll down through the rest of the --

8 Q (By Ms. Nagle) Sure. Yeah, absolutely.

9 A That looks to be accurate, yes. Thank  
10 you.

11 Q Okay. Other than the documents listed  
12 in Appendix A, were you provided with any other  
13 facts that you considered in forming your  
14 opinion?

15 A No, I was not.

16 Q Were there -- did counsel provide you  
17 any facts or data that you considered in forming  
18 your opinion?

19 A Any facts or data, no, no, huh-uh.

20 Q Were there any assumptions that counsel  
21 provided to you that you considered in forming  
22 your opinions in this report?

23 A No.

24 Q And are there any documents that you  
25 asked for but did not receive?

1 A I don't believe so, no, huh-uh.

2 Q Okay. Did you review any federal  
3 regulations in preparing your report?

4 A No, no, I did not, other than whatever  
5 is in this report, no.

6 Q Okay. So did you review 25 CFR Part 214  
7 in preparing your report?

8 A Not really in preparing my report, no.

9 Q Okay. Okay. Let me just stop this one.  
10 Did you review 25 CFR Part 211 in  
11 preparing your report?

12 A No, I didn't.

13 Q Did you review the Osage Allotment Act  
14 of 1906 and its amendments in preparing your  
15 report?

16 A I did not, no.

17 Q Okay. Actually, I'm going to go back to  
18 your report again. My apologies. I just hate  
19 leaving it on screen share when we're not there.  
20 But it looks like, if we look at Page 4 of your  
21 report, you discuss the Roadrunner solar project  
22 here. And so do you see that? Is that -- does  
23 that look like a correct rendition of your  
24 report here on Page 4?

25 A Yes, yes, it does.

1 Q And you received documents related to  
2 the Roadrunner solar project; is that correct?

3 A Yes.

4 Q Okay. And did Roadrunner Solar involve  
5 the sovereignty of a tribal nation?

6 A I don't believe that it did, no.

7 Q Okay. Did the documents you reviewed  
8 for Roadrunner solar involve a congressional  
9 statute mandating that the mineral estate be  
10 administered in the best interests of the owner  
11 of the mineral estate?

12 A Not that I'm aware of, no.

13 Q Did Roadrunner Solar, or any other  
14 project for which you received documents,  
15 involve the United States' duties or obligations  
16 as trustee over an Indian trust asset?

17 A Not that I'm aware of, no.

18 Q And at the time that you conducted your  
19 analysis for your expert report, were you aware  
20 that in Osage County, the surface estates are  
21 subservient to the Osage mineral estate?

22 A You know, I'm not an attorney, but I  
23 know from title review. So if we looked at the  
24 title, if there's a severance of the estate. So  
25 I'm not aware of, you know, the details around

1 Osage County, per se, but just in this  
2 particular case, that there's a severance of the  
3 estate. I am aware of that.

4 Q **And how did your understanding of the**  
5 **severance of the estate factor into your**  
6 **opinion?**

7 A Well, I think it factors into all of our  
8 work. I mean, you know, we specialize in title  
9 work, and we specialize in what we call curative  
10 work. So curative work is a resolution of any  
11 issues that are going to come up in connection  
12 with finance. And so from the standpoint of a  
13 severance, you know, that's one of the first  
14 things that we look at whenever we do title  
15 review.

16 Whether it's a wind project or a solar  
17 project, we're always going to make sure that we  
18 understand if there is a severance. So, you  
19 know, we're not so much focused on the  
20 subservient or that type of thing; we're more  
21 focused on the severance, what's constituted in  
22 that, what -- you know, what could be out there  
23 in terms of potential issues and that sort of  
24 thing. So if that makes sense, that's really  
25 more of our perspective.

1           Q    Typically, in your work experience, when  
2    there is that bifurcation and that severance of  
3    the -- of the surface and the mineral estate,  
4    what kind of issues could arise in your line of  
5    work?

6           A    Well, there can be a -- you know, a  
7    conflict of the parties -- right? -- in terms --  
8    in terms of use. And I think it's -- you know,  
9    the other issue that arises for us is, our  
10   clients want to make sure that they can get ALTA  
11   35 coverage, which is mineral coverage. And so  
12   if we see a severance, initially, we know that  
13   there's going to have to be some kind of  
14   discussion with some of the parties to make sure  
15   and find out what the parameters are going to be  
16   in order to be able to get that coverage.

17           So it really depends on the particular  
18    -- the particulars of the situation. We're  
19    going to look at a lot of different parameters,  
20    you know, understand the parties, and understand  
21    what -- you know, is there any, you know, our --  
22    is there any minerals out there. Sometimes, you  
23    know, you have a severance, but there's -- you  
24    know, there's not really a mineral estate that's  
25    -- you know, has any real value, per se, in

1 terms of exploration.

2 So from our -- I guess from our  
3 standpoint, we're not really looking at it from  
4 a legal standpoint so much as a business risk  
5 standpoint and what factors might need to be  
6 addressed and negotiated.

7 Q Uh-huh. And so from a business risk  
8 standpoint, what would be a red flag that  
9 perhaps something needs to be negotiated in a  
10 situation where the surface estate is  
11 subservient to the mineral estate?

12 A I think any time you have a severance,  
13 you know, you're going to want to look at that  
14 really closely. You're going to want to  
15 understand who the parties are, you're going to  
16 want to understand what the potential estate  
17 could be, what the use is going to be. Is it  
18 going to be wind versus solar? You want to look  
19 at the adjoining land.

20 There's a lot of things that can be  
21 taken into account in terms of a design, in  
22 terms of location of improvements. So I think  
23 just from a -- from a high level, you're going  
24 to want to understand all the different pieces.

25 Q Uh-huh.

1           A    Who the parties are, you know, that type  
2 of thing.

3           Q    Okay. So, now, I understand that your  
4 report discusses, quote, reasonable standards  
5 and customs within the renewable energy market;  
6 is that correct?

7           A    Yes, that sounds correct.

8           Q    And what is your definition of  
9 "reasonable standards and customs"? How would  
10 you define that?

11          A    I think it would be based upon a  
12 precedent of my experience, having worked on  
13 many financings, many projects across the United  
14 States, and working with the attorneys, working  
15 with the title companies, Alta surveyors, all  
16 the different pieces and issues that they're  
17 going to look at.

18          Q    And in your expert opinion, Mr. Hazel,  
19 in his report, does not rely on reasonable  
20 standards or customs; is that correct in your  
21 opinion?

22          A    That's correct, yes.

23          Q    In your expert opinion, what would be a  
24 reasonable standard here to rely on to determine  
25 what amount defendants are owed to pay for the

1 lease the Tenth Circuit has stated they must  
2 acquire?

3 THE REPORTER: I'm sorry. Can you  
4 repeat the last part of that?

5 MS. NAGLE: Sure. Let's see.

6 Q (By Ms. Nagle) In your expert opinion,  
7 what standards would you employ to decide what  
8 amount of money defendants must pay to the Osage  
9 Minerals Council for the -- for the lease that  
10 the Tenth Circuit has stated they're required to  
11 obtain?

12 A I think what I would expect is that it  
13 would be based on -- on the market conditions,  
14 and I think, from what I can understand about  
15 Osage County, there's a lot of information out  
16 there on limestone being sold. There's a --  
17 there's a quarry that's very close to this  
18 project site.

19 So I think that would be my expectation,  
20 is that the compensation would be based upon  
21 what's typically paid. I think the problem or  
22 part of the disconnect that I have that I still,  
23 honestly, am struggling with here is, again, you  
24 know, my idea of mining is -- in my experience,  
25 if I'm working with a client on mining is that

1 there's an extraction that's taking place, it's  
2 being taken off site, it's being sold. And none  
3 of that, you know, we know has happened here.

4 But irregardless of that, I think if you  
5 were to agree that there needs to be a lease and  
6 that there needs to be compensation, then I  
7 think I would expect that it would be based on  
8 those market conditions.

9 So, you know, I think we have some  
10 permits and those kinds of things where there's  
11 some kind of a, you know, payment that's made  
12 upon execution of the agreement. It looks like  
13 there's a -- there's some kind of a payment  
14 that's made during kind of the development or  
15 assessment period, and then there's some kind of  
16 percentage that's applied to that.

17 Q So in your opinion, did the Tenth  
18 Circuit get it wrong here? Do you disagree with  
19 the Tenth Circuit that mining took place?

20 A Well, I'm not -- I'm not here to  
21 disagree with the courts; right? That's --  
22 that's -- I mean, I think they've ruled what  
23 they've ruled; right? I'm just talking about my  
24 experience, what you asked me about, you know,  
25 what's reasonable and customary for me. So I

1 think with that in mind, that I -- if I'm  
2 looking at the compensation -- I don't think the  
3 courts really opined on the compensation; I  
4 think they really just said there's mining  
5 that's taken place. So I -- that's really all I  
6 can say about that.

7 Q **So in your expert opinion, did the Tenth**  
8 **Circuit get it right when it said that mining**  
9 **took place in this litigation?**

10 A I think they took a very liberal view.  
11 I think they say in their opinion that where  
12 there's an ambiguity, they need to rule in favor  
13 of the tribe, and it seems to me like that's  
14 what they've done here. Certainly, you know,  
15 there's a lot of history, there's obviously a  
16 lot of legacy, you know, and working with the  
17 tribes is very delicate.

18 And so I think, you know, there's a --  
19 there's a lot of factors here, probably beyond  
20 just the mining, but, yeah, you know, I'm not  
21 really -- the courts ruled as they did, so I'm  
22 not here to dispute that, *per se*, because I  
23 think we are where we are.

24 Q **In your expert opinion, does the Tenth**  
25 **Circuit's decision fit within the reasonable**

1 standards and customs framework that you use in  
2 your expert report?

3 A Well, all I can say is, you know, I have  
4 a lot of experience working on construction and  
5 construction of projects where foundations and  
6 materials are brought in, or what have you. And  
7 I -- their -- their finding in this case, it  
8 just seems to me, you know, really outside the  
9 box. I wouldn't have expected that. If I was  
10 sitting in the developer's seat, I would not  
11 have anticipated that, no way.

12 Q Do you have an understanding of why in  
13 1906 Congress assigned the mineral rights to the  
14 Osage Nation?

15 MS. STEVENSON: Object to form.

16 THE WITNESS: No, I don't know.

17 Q (By Ms. Nagle) Do you -- in your report  
18 when you mention this reasonable standard --  
19 this reasonableness standard -- excuse me --  
20 does that reasonableness standard take into  
21 account whether or not those parties, the seller  
22 and the buyer, are willing to participate in the  
23 negotiation?

24 A I think so, yes. You know, there is --  
25 there's always going to be factors. Renewable

1 projects are very difficult to develop. I work  
2 in all jurisdictions. It's not easy anywhere.  
3 It's always a challenge, and there's always  
4 issues that come up, but there's a -- there's a  
5 conversation that, you know, has to take place.  
6 So...

7 **Q Is the calculation of what is reasonable  
8 affected by the fact that there is an illegal  
9 trespass?**

10 MS. STEVENSON: Object to form.

11 THE WITNESS: The trespass wasn't a  
12 factor for me. I'm not sure -- no, I didn't  
13 consider that, no.

14 **Q (By Ms. Nagle) Does the reasonableness  
15 standard differ depending on the type of  
16 renewable energy you're working on, you're  
17 working with?**

18 A Well, as I mentioned, you know, every  
19 project is different. You know, every project  
20 has its own set of parameters, but, generally  
21 speaking, in my experience, there's -- there's  
22 normally -- there's a common ground that can be  
23 met. You know, I've worked on a lot of  
24 different cases. I worked on a case where the  
25 agreement was access rights. We had a tribe

1 that, you know, they wanted to be able to hold  
2 their vision quests.

3 And so one of the conditions of the  
4 project was to -- for each of the landowners to  
5 grant these rights across the access road so  
6 that the tribe could be able to access this area  
7 that was sacred for them, to be able to hold  
8 their specific vision quests. And so that was  
9 done; those easements were negotiated.

10 So I think it depends on a lot of  
11 different parameters, but I think certainly  
12 there's -- you know, again, there's kind of a  
13 reciprocal nature that, normally there's a  
14 common ground that can be found on these  
15 projects, that, I think, does help to repin  
16 (phonetic) the reasonableness of the -- of the  
17 compensation.

18 Q **In your expert opinion, is there a  
19 common ground here to be found between the Osage  
20 Minerals Council and defendants?**

21 A You know, I don't know, because I didn't  
22 work on this case, so I don't -- I don't know.  
23 I can't really speak to that.

24 Q **Okay. Does your reasonableness standard  
25 account for a trust relationship between the**

1       **United States and a federally recognized tribal**  
2       **nation?**

3           A     No, I don't really take that into  
4       account, per se, no, huh-uh.

5           **Q     Does your reasonableness standard**  
6       **account for the sovereignty of a tribal nation?**

7           A     I think absolutely, because, as I say, I  
8       -- you know, there's a lot of different  
9       solutions that have been reached on other  
10      projects. So I would say yes. You know,  
11      there's not a one size fits all. There's a lot  
12      of different ways that things can be negotiated.

13           **Q     Uh-huh.**

14           A     By "things," I mean compensation, if you  
15      want to classify it as compensation. It's not  
16      always, you know, a payment of money. There may  
17      be other things that are of value that can be  
18      exchanged.

19           **Q     Uh-huh. Is it your understanding that**  
20       **the Osage Minerals Council had the sovereign**  
21       **right to say no to the mining that took place on**  
22       **the Osage mineral estate in this case?**

23           A     I believe I did hear that, yes.

24           **Q     And did that factor -- that legal**  
25       **reality factor into your expert opinion in any**

1       **shape or form?**

2           A     In terms of the reasonableness, you  
3     know, I -- you know, I think we're still talking  
4     about what would be reasonable compensation. I  
5     think you're talking about something else;  
6     right? What their -- what their view might be  
7     of the project or moving forward, I think that's  
8     a different conversation; right?

9           **Q     In your expert opinion, what would be a**  
10     **reasonable compensation if the Osage Minerals**  
11     **Council said, no, we're not -- we're not**  
12     **granting a lease, you do not have permission to**  
13     **mine on the Osage mineral estate?**

14           A     I would have to sit down and think about  
15     that. I can't necessarily tell you that right  
16     off the top of my head. Again, I didn't work on  
17     all the development of this project and didn't  
18     have conversations with the parties, so it would  
19     be hard for me to say.

20           **Q     In rendering your expert opinion in this**  
21     **case, did you review any documentation or**  
22     **evidence that indicated to you that the Osage**  
23     **Minerals Council would have been willing to**  
24     **grant defendants a lease to mine the Osage**  
25     **mineral estate?**

1           A    Well, I would only say, just speaking  
2       from the standpoint of a -- as a negotiator, I  
3       think there was an early letter about some  
4       collaboration and some exchange and, you know,  
5       making sure that they had all the information on  
6       the project. So I'm an eternal optimist; I  
7       always feel that there's an opportunity for  
8       parties to work out something.

9           There's -- in very rare cases, do --  
10      maybe we have to walk away, but, typically, you  
11      know, if people can sit down and really have a  
12      conversation, there's some common ground that  
13      can be reached.

14           **Q    So would you say that your expert report  
15      relies on the assumption that the parties would  
16      have eventually worked it out and negotiated a  
17      lease; is that correct?**

18           A    Well, I would have to say that early on  
19      -- you know, I don't think we knew in the  
20      beginning that a lease was going to be required;  
21      right? I mean, I think this decision came very  
22      much later. I think it came even as the project  
23      was in construction. So I think if we're going  
24      to back up and go to the very early part of this  
25      project when the -- when the -- when the

1 negotiations took place, I don't know that it  
2 would have been a lease -- right? -- because I  
3 don't know that, you know, even the -- even the  
4 Osage and the tribe didn't really put forward  
5 the fact that there has to be a lease.

6 I don't think that -- I don't -- I  
7 didn't see that in early -- any of that early  
8 correspondence where it was specifically said,  
9 you know, give us a lease. So I can't say that  
10 that negotiation would have taken place. I  
11 think, again, a lot of our work is in the early  
12 stages, so I think if we back this up to, I  
13 don't know, 2010 or 2011, maybe -- again, I  
14 didn't work on this project, but in the very  
15 early stages, I think that's where those, you  
16 know, negotiations would have taken place.

17 Q So -- so just to be clear, your -- in  
18 rendering your expert opinion in this case, you  
19 assumed that the Osage Minerals Council did not  
20 communicate to defendants that they needed to  
21 get a lease in this case early on; is that  
22 correct?

23 A In my -- in my expert opinion, I'm  
24 commenting on the FTI report -- right? -- and  
25 the calculation of the compensation. So that's

1 -- that's what I am commenting on there, and the  
2 basis for that, and whether or not that's, you  
3 know, reasonable within the industry.

4 You know, as far as the lease and all  
5 that, I think we're there now; right? We  
6 weren't there a long time ago, but I think  
7 that's a -- that's a different -- that's a  
8 different point than what we're talking about.  
9 And I'm -- you know, at this point, I'm just  
10 commenting on what I think is the reasonable --  
11 based upon my industry experience of what I  
12 would expect to see in terms of compensation  
13 that would be paid, and it's not on the basis of  
14 what's in the FTI report.

15 Q Yeah, I understand that. I guess I'm  
16 trying to understand what you mean when you  
17 refer to the fact that, we didn't know that a  
18 lease was required before construction. And so  
19 can you help me understand the time frames that  
20 you're using when -- what is your understanding  
21 of when construction commenced on the project?

22 A I believe, and I think I say in my  
23 report, it would -- you know, construction of  
24 the actual foundations maybe took three or four  
25 months or something of that case in 2014. So I

1 -- my -- and, again, I didn't work on this  
2 project, but I think my understanding is that  
3 the construction took place in -- you know,  
4 thereabout in 2014. So --

5 Q So -- I'm sorry. Go ahead.

6 And so when you say that you didn't --  
7 that the -- you know, there wasn't an  
8 understanding that a lease was required before  
9 construction commenced, are you referring to  
10 2013 and before?

11 A Correct, yes.

12 Q And so in drafting your expert report in  
13 this case, is it correct that one assumption --  
14 or one fact that you relied on was that  
15 defendants did not realize that a lease was  
16 required from the OMC before 2014; is that  
17 correct?

18 MS. STEVENSON: Object to form.

19 THE WITNESS: I don't know that it's  
20 really correct to say that. I mean, I think,  
21 you know -- I think that there might have been a  
22 different outcome in this if that was understood  
23 earlier. I think I would say that, but my  
24 report was prepared to respond to the FTI report  
25 in terms of the compensation that's been

1 calculated now.

2 So, you know -- you know, I think it's  
3 unfortunate that we didn't know about that. And  
4 I'm putting myself in the developer's seat;  
5 right? You know, I'm putting myself like if  
6 this was my -- my client, you know, and I would  
7 certainly have wanted the benefit of that  
8 information earlier.

9 Because, obviously, you know,  
10 understanding -- you know, when we look at risk  
11 and we look at due diligence and we're thinking  
12 about the checklist and all the different  
13 questions that are going to come up, you know,  
14 the fact of, you know, do we have a mining lease  
15 for doing work on a foundation is not going to  
16 be something that has ever come up. It's just  
17 not going to come up so --

18 Q (By Ms. Nagle) Uh-huh, uh-huh. Let's  
19 see. I am -- let's see -- I'm going to go ahead  
20 and show you an exhibit. I believe this will be  
21 Exhibit 36. Let me see if I can figure out how  
22 to do this.

23 MS. STEVENSON: Mary Kathryn, while  
24 you're working on that -- this is Sarah -- we've  
25 been going a little over an hour, so if you get

1 to a stopping point in the next few questions, I  
2 could use a little break.

3 MS. NAGLE: Absolutely, yes. Let me  
4 just introduce this exhibit. I have just a  
5 couple of quick questions, and then we can take  
6 a break, absolutely.

7 Here we go. Okay. This is the  
8 document.

9 Q (By Ms. Nagle) Okay. So I'm going to  
10 share my screen, and so this document that we're  
11 looking at here, just for everyone's benefit, is  
12 Bates stamped Osage Wind PRIV-000414 through, it  
13 looks like, 420. And this is being entered as  
14 Exhibit 36. Give everyone just a little moment  
15 to look at it and review it, and I'm just  
16 labeling it 36.

17 And this is a memo from Sarah Stevenson  
18 to Bill Scott on October 31st, 2013, and the  
19 subject line states, "Rights of surface owners  
20 to use soil."

21 Ms. Centera, have you seen this document  
22 before?

23 A I have not.

24 Q So would it be correct to state that in  
25 rendering your expert opinion in this case, you

1 did not rely on this document in any shape or  
2 form?

3 A I did not, no.

4 Q Okay. So I realize that you have not  
5 seen it before, but turning to the second page  
6 of the document, which is Bates stamped 415, I  
7 just want to read to you this paragraph right  
8 here -- well, I guess I can't highlight on this,  
9 but here where it says, "analysis," it says,  
10 "The Osage tribe has indicated that it will  
11 assert Tradewinds Energy must receive a mining  
12 permit from the Osage Minerals Council in order  
13 to construct and operate the wind farm, on the  
14 grounds that the excavation and construction and  
15 permanent placement of the towers constitutes  
16 mining of the Osage's mineral estate."

17 So just to read it, you were not aware  
18 of this -- of this memo when you wrote your  
19 expert report; is that correct?

20 A No, I was not.

21 Q And so you were not aware that in  
22 October of 2013, defendants were relaying, at  
23 least to one another, that the Osage tribe had  
24 indicated that the construction -- the  
25 excavation and construction on the Osage mineral

1       **estate would constitute mining; is that correct?**

2                   MS. STEVENSON: Object to form.

3                   THE WITNESS: I -- I have not seen this,  
4                   so I -- I -- I'm not aware of the contents of  
5                   this information, so...

6       **Q       (By Ms. Nagle) Would you agree that**  
7       **this memo is dated prior to the commencement of**  
8       **construction?**

9                   MS. STEVENSON: Object to form.

10                  THE WITNESS: It does appear to be, yes.  
11                  As far as I know, the construction started in  
12                  2014, yes.

13       **Q       (By Ms. Nagle) Okay. In your expert**  
14       **opinion, does this -- this sort of information**  
15       **constitute the kind of appraisal that you mention**  
16       **in your report when you state that entities need**  
17       **to be apprised of the need to get a lease? Does**  
18       **this constitute that kind of form of appraisal?**

19                  MS. STEVENSON: Object to form.

20                  THE WITNESS: You know what? I have not  
21                  seen this before, so I've not had the chance to  
22                  read it or get familiar with it, so I can't  
23                  really comment on it.

24       **Q       (By Ms. Nagle) And so is it true that**  
25       **when you rendered your expert opinion in this**

1 case, you were not aware that defendants had  
2 received this kind of communication from the  
3 Osage tribe; is that correct?

4 MS. STEVENSON: Object to form.

5 THE WITNESS: No, I was not aware.

6 Q (By Ms. Nagle) Okay. That's all the  
7 questions I have on that document, and so why  
8 don't we go ahead and take a break. Would ten  
9 minutes suffice? Does that sound good?

10 MS. STEVENSON: That should be fine.

11 MS. NAGLE: Okay. So we'll come back at  
12 12:10 central.

13 (Short break at 12:00 p.m., resumed at 12:14  
14 p.m.)

15 Q (By Ms. Nagle) All right. Great.  
16 Thank you, everyone. So I'm going to pick back  
17 up -- let's turn to -- this is Exhibit 35, your  
18 report, Ms. Centera. Looking at Page 2 of your  
19 report here -- wait, yes, Page 2. My apologies.  
20 I'm interested in the language here where you  
21 write, "Specifically, the purported mining of  
22 the minerals was a one-time event, confined to a  
23 very specific time period and for a very  
24 specific limited purpose, i.e., the sorting and  
25 crushing of rock and excavation and reuse of the

1       **crushed rock for the wind turbine foundations."**

2                   **Oh, you know what? My apologies. I**  
3                   **thought I was sharing my screen the whole time,**  
4                   **and I was not.**

5           A     I'm sorry. Can I interrupt for just a  
6           moment?

7           Q     **Yes.**

8           A     I want to go back to just to -- Mary  
9           Kathryn, to something I said earlier about the  
10          documents.

11          Q     **Sure.**

12          A     I was provided with some additional  
13          documents this week in connection with the  
14          preparation for the deposition. I did not  
15          consider those in my report, and they didn't  
16          change my opinion, and I understand those --  
17          that information was sent to you. So I just  
18          want to make sure the record is corrected as to  
19          that.

20          Q     **Thank you so much for that**  
21          **clarification, and I understand which documents**  
22          **you're referring to. Your counsel did send**  
23          **those to us, and that makes sense, so thank you**  
24          **for that clarification.**

25                   **So I'll go back to Exhibit 35, and I'm**

1 going to actually hit Share Screen this time, so  
2 here's what I was showing myself before. And so  
3 here we are on Page 2 of your report, and I'm  
4 interested in this language here in this -- in  
5 this top paragraph that we're looking at, and  
6 I'll read it again.

7 You state, "Specifically, the purported  
8 mining of the minerals was a one-time event,  
9 confined to a very specific time period and for  
10 a very specific limited purpose, i.e., the  
11 sorting and crushing of rock in excavation and  
12 reuse of the crushed rock for the wind turbine  
13 foundations."

14 Do you see that language right here, Ms.  
15 Centera?

16 A I do, yes.

17 Q And do you -- do you -- can you verify  
18 that that is the actual language in your report?

19 A Yes.

20 Q Now, did you -- did you rely on the  
21 Tenth Circuit's decision in drafting your report  
22 and specifically your definition of mining?

23 A Yes, we did -- I did.

24 Q And I believe we spoke about this just a  
25 little bit earlier, and you said you were

1       shocked and surprised by the Tenth Circuit's  
2       decision. Can you help remind me, what exactly  
3       did you find to be different about the Tenth  
4       Circuit's definition of mining, different than  
5       the definition you would customarily use?

6           A    I just -- I think it was just the  
7       finding that the -- the crushing of the  
8       limestone, you know, constituted mining, that  
9       that -- that that use. I think that was what  
10      surprised me. I -- you know, again, if I'm --  
11      if I'm wearing my developer hat and, you know,  
12      I'm aware of this, then I probably would have  
13      taken steps to make other provisions.

14           If I had -- if it had been clear to me  
15      and, again, I'm sitting in my developer seat and  
16      we're talking about the project, you know, early  
17      on and we have a clear understanding of what's  
18      going to be required -- and, I mean, this is  
19      just something that, you know, again, if I think  
20      about construction -- you know, and I've seen,  
21      you know, turbine foundations myself, and I  
22      certainly know what -- you know, I've seen a lot  
23      of different kinds, I know what goes into the  
24      foundations.

25           And so from the standpoint of

1 construction, if you understand that there's  
2 going to be certain requirements, whatever they  
3 might be -- and, again, in our -- in the course  
4 of our curative work, we work on all kinds of  
5 different/different kinds of crossing  
6 agreements. There's a whole -- you know, many,  
7 many different things that come up in the course  
8 of construction that require compliance.

9                   And so you're going to make sure that  
10 you understand what all those are. And so I  
11 think from that standpoint, the fact that this  
12 position was taken, again -- you know, ideally,  
13 you know about it early, so that you can make an  
14 informed decision, you know, as far as -- as how  
15 you want to proceed.

16                   So I think that was the view, and with  
17 my developer hat on, I'm going to be surprised  
18 that there's going to be this finding with  
19 regard to the crushing of the rock.

20                   Q    **And so in formulating your expert**  
21                   **opinion in this case, did you have an**  
22                   **understanding of whether or not defendants in**  
23                   **this case were aware that the crushing of the**  
24                   **limestone and use of that crushed limestone for**  
25                   **the foundations would trigger the need to obtain**

1      **a lease?**

2            A     My understanding of the information is  
3     that it wasn't known until later, so I think  
4     even in the early stages -- I mean, and, again,  
5     my work is early -- right? -- because you're  
6     setting it up for financing, so it's going to be  
7     done well in advance of construction. Crossing  
8     agreements and subordinations and all the  
9     different things that we work on are done, you  
10    know, many, many months before construction  
11    starts.

12           So I think in that case, again, if I  
13    think about it from that standpoint and you  
14    would consider this in that ordinary course,  
15    then you would -- you would want to understand  
16    that, so...

17           Q     **And so just for purposes of your expert**  
18    **report in this litigation, what was your**  
19    **understanding or assumption of when the**  
20    **developer, in this case defendants, had an**  
21    **understanding that the rock crushing that they**  
22    **were undertaking would require a lease?**

23           A     My understanding is that it was later.  
24    It was more near the period of time when they  
25    were in construction.

1 Q So near the period of time of  
2 construction?

3 A Right.

4 Q Okay. Now, also here on Page 2, I note  
5 that you state, "An ongoing mineral lease is not  
6 appropriate here."

7 In your opinion, why is an ongoing  
8 mineral lease not appropriate?

9 A Because there's -- you know, there's not  
10 ongoing mining. You know, again, in my  
11 understanding of mining in my work and what I  
12 traditionally see, mining is -- and, you know,  
13 again, if I think about my curative work, and we  
14 looked at lots of oil and gas leases, for  
15 instance, and different operations. And in  
16 those cases, it's an ongoing -- there's some  
17 kind of an ongoing activity.

18 And if there's not an ongoing activity,  
19 then a lot of cases, the rights will terminate.  
20 And so that's the perspective that I'm looking  
21 at here, if I'm thinking about some kind of an  
22 ongoing activity. And a lot of our work is we  
23 use affidavits to get rid of leases where there  
24 is no ongoing activity. We're able to get those  
25 removed from the record. So that's the

1 perspective that I'm using here.

2 Q In your expert opinion, when you state  
3 that an ongoing mineral lease is not  
4 appropriate, when -- what would you put as the  
5 date of termination for the mineral lease? When  
6 did the mining stop?

7 A I think if you look at it from the --  
8 from the -- I'm not even sure that -- I guess  
9 the court did say that it was mining, so, you  
10 know, if you look at it from the standpoint of  
11 some of these permits, then maybe it would be  
12 for the three months that the -- that the  
13 construction of the foundations was going on.

14 You know, I'm not familiar enough with  
15 all the different -- you know, the details  
16 around this case, but -- in terms of the  
17 construction, but that's what I would say, based  
18 upon what I know.

19 Q And so is that expert opinion that  
20 you're drawing about whether or not an ongoing  
21 mineral lease is necessary, is that based on the  
22 Tenth Circuit's definition of mining?

23 A Well, I think what I'm doing is I'm  
24 comparing it back to the FTI report and the --  
25 and I think the assertion in that report that

1 part of the compensation for damages is the  
2 entirety of the operations, period, of the  
3 leases. So if you look at it from that  
4 standpoint and then you take it back and you  
5 compare it to this kind of a mining operation  
6 that we're talking about here, I think that's  
7 where there's no -- there's no correlation.

8 And so if you think about it from that  
9 standpoint and then you try to look at this case  
10 and say, okay, there was some mining, when would  
11 you say that that mining occurred, in my view,  
12 that mining would have occurred just during that  
13 period of time that you would have actually been  
14 in the construction of the foundation. So if  
15 you were to go get this permit or something of  
16 that sort, it would be for that period of time.

17 Q **Would -- utilizing the Tenth Circuit**  
18 **definition, are you saying that the permit would**  
19 **have covered the time during which the rock was**  
20 **crushed to be used for the foundations?**

21 A I think that's what happened during the  
22 construction of the foundation, so that would be  
23 the period of time.

24 Q **And what is your understanding of what**  
25 **plans the defendants have made to return the**

1       **crushed rock back to the Osage mineral estate**  
2       **when they're done using that crushed rock?**

3           A     I'm not aware of that. I don't know. I  
4       haven't consulted on that, so I don't know.

5           **Q     So you're not aware of any plans to**  
6       **return the crushed rock to the mineral estate;**  
7       **is that correct?**

8           MS. STEVENSON: Object to form.

9           THE WITNESS: Yeah, I've had no  
10       discussions with them as to what their plans are  
11       later on, so I don't know. This is not my  
12       project, so I'm not working on that part of it.

13          **Q     (By Ms. Nagle) Do you have any**  
14       **understanding of whether the Osage Wind project**  
15       **could continue operating if the crushed rock was**  
16       **taken out of the foundations of the wind**  
17       **turbines and no longer there?**

18          MS. STEVENSON: Object to form.

19          THE WITNESS: Well, I think it would be  
20       difficult to do at this point; right? I mean, I  
21       think that's why early on in the process -- and,  
22       again, I'm talking about what my role would have  
23       been, which would have been much earlier, I  
24       think you would look -- have looked at -- more  
25       than likely you would have looked at

1 alternatives; right? If you had understood that  
2 you were going to end up in this situation with  
3 the -- with this, you know, question around the  
4 limestone, I think you would have looked at  
5 alternatives. That certainly would have been  
6 what we would have done.

7 You know, what other options do we have?  
8 I mean, that's kind of a standard -- one of the  
9 standard first questions that I always ask is  
10 what are our options, what other options.  
11 There's other quarries, there's other things  
12 that we could do, you know. So I think that  
13 would have been one of the questions. So now at  
14 this stage, yeah, I can't really comment on  
15 that.

16 Q (By Ms. Nagle) **In this instance, what**  
17 **is your understanding of what other options the**  
18 **defendants considered?**

19 A I'm not sure what those are. I would  
20 just say if it were -- if I had been involved at  
21 that stage, I think we would have tried to have  
22 looked at other options, as far as bringing in  
23 -- you know, because if you think about the  
24 construction, and we know -- as I say, in my  
25 experience, I know materials are brought in for

1       roads routinely and for different things, then I  
2       think as part of that, you would have looked at  
3       the foundations as well.

4           Q    Uh-huh.  So I'm going to introduce an  
5       exhibit that's been previously introduced.  This  
6       is Exhibit 5, and it's Bates stamped -- sorry,  
7       hold on just a second.  Let me get down here.  
8       Osage Wind-012246, I believe this was first  
9       introduced in Mr. Pfahl's deposition.  Are you  
10      familiar with this document, or have you seen  
11      this document before?

12       A    I don't recall seeing this, no.  I don't  
13      recall seeing it.

14       Q    Well, I can represent to you that it is  
15      a purchase order.  Are you familiar with Burbank  
16      Materials, by any chance?

17       A    I am not, no.

18       Q    Okay.  Do you recognize the Osage wind  
19      farm with the address here?

20       A    I recognize the name of the project,  
21      yes.

22       Q    And are you familiar with some of these  
23      materials here that are on the purchase order?

24       A    I'm familiar with shay and shale -- or  
25      pardon me, I'm sorry -- clay and shale.  I'm

1      familiar with that. I'm not sure that I'm  
2      familiar with everything, but those things I am,  
3      generally.

4           **Q      And so are you aware that during the**  
5      **course of construction of the Osage wind farm,**  
6      **that defendants did purchase off site materials**  
7      **and minerals for the purposes of constructing**  
8      **the wind farm?**

9           A      I'm not specifically aware of it. As I  
10     say, I'm not surprised to hear of it, just  
11     because I know -- I know it happened on these  
12     projects, you know, routinely, especially for  
13     the roads. It's usually necessary to bring in  
14     outside material, so I'm not surprised to hear  
15     that.

16           **Q      In your expert opinion, why didn't**  
17      **defendants purchase all of their materials off**  
18      **site, as opposed to taking some materials from**  
19      **the Osage mineral estate itself?**

20           MS. STEVENSON: Object to form.

21           THE WITNESS: I think it's because they  
22     didn't know. I mean, that's my understanding,  
23     is that they weren't aware. I -- you know,  
24     again, it's -- to me in my experience, if you're  
25     aware of these kinds of things through the

1 course of construction, you usually take steps  
2 to make other provisions.

3 Q (By Ms. Nagle) And in your expert  
4 opinion, what would constitute knowledge that a  
5 lease is required?

6 A I think being told specifically by the  
7 party that you need to have a lease. I mean,  
8 normally, as you're going through the process,  
9 whether it's permitting -- or I should really  
10 talk about what I know, which is curative work.  
11 You know, we submit, you know, a request for a  
12 subordination or some particular document. We  
13 do a lot with federal agencies, and we get a  
14 very specific request from them for documents,  
15 and then we comply with all.

16 So normally we make a request, we say,  
17 we have a project, we need a subordination, they  
18 send us a form. So I think that's what I'm  
19 accustomed to seeing. So, you know, just  
20 thinking about the early correspondence that  
21 went back and forth, at that point, you know,  
22 normally, in my world, I would expect to see  
23 some kind of specific request for whatever it  
24 would be, documentation or what have you, a  
25 lease.

1           Q    Uh-huh.  Okay.  Let's go to -- sorry,  
2 hold on just one second.  Okay.  Give me just a  
3 second here.  Looking through a couple of my  
4 documents.  Okay.  I'm going to -- I believe I'm  
5 at Exhibit 37, I think.  I'm going to introduce  
6 a new exhibit, and let me open that up for --  
7 okay.

8                   So this is Exhibit 37 that I'm  
9 introducing.  It is Bates stamped OSAGE WIND  
10 024749, and it's an email chain, and it goes all  
11 the way to OSAGE WIND-024751.  Ms. Centera, are  
12 you familiar with this document, or have you  
13 seen this communication before?

14           A    I don't believe that I have, no, no.

15           Q    Okay.  So -- go ahead.

16           A    No, I apologize for talking over you.  
17 No, it doesn't look familiar, huh-uh.

18           Q    I see here that it looks like these  
19 emails were being exchanged in May of 2014.  Do  
20 you have an understanding of whether or not this  
21 was before or after the commencement of  
22 construction of the wind farm project?

23           A    I imagine it was before, but I can't say  
24 for certain, because I'm not sure exactly when  
25 the construction started.

1 Q Okay. And I see here there's an email  
2 from Joan Heredia, it looks like May 22nd, 2014,  
3 to several -- several people at the EGPNA. Are  
4 you familiar with who Joan Heredia is or what  
5 her role is or was at that time at EGPNA?

6 A Only on what's on the email there.

7 Q Okay. I will read -- she writes to  
8 Aaron Weigel. She states, "Aaron, I note in the  
9 attached POD fees analysis being performed for  
10 road aggregate. In an abundance of caution that  
11 we do not want to trigger a minerals permit,  
12 will you please look into this and report back  
13 to this group on what the plans are. I note it  
14 is common to try and use on site material when  
15 possible, but as you know, Osage is special."

16 What is your -- do you have an  
17 understanding of what Joan Heredia means when  
18 she writes that, quote, unquote, Osage is  
19 special?

20 MS. STEVENSON: Object to form.

21 THE WITNESS: You know what? I don't  
22 know. I'm not sure, because I'm not sure what  
23 she was thinking or -- I couldn't comment on  
24 that.

25 Q (By Ms. Nagle) Okay. If you move up,

1 in response to her email, Aaron writes on May  
2 22nd, "Ron, Mike, Craig," and here is his email,  
3 and I'm going to skip right to this sentence  
4 right here that my cursor's over. "It is very  
5 important that we not remove any soil from the  
6 project site or use site materials in lieu of  
7 materials we would typically buy off site in  
8 developing a wind project. Osage Nation has  
9 mineral rights for the project lands, and  
10 removal of soil, especially for commercial gain,  
11 could constitute mining."

12 In your expert opinion, does this  
13 demonstrate that defendants knew in May of 2014,  
14 that if they use the on site minerals they were  
15 taking from the Osage minerals estate to crush  
16 and fill the wind turbine foundations, that they  
17 would need to get a lease from the Osage Nation?

18 MS. STEVENSON: Object to form.

19 THE WITNESS: Not necessarily, no, no.  
20 I mean, I think -- in my experience, again,  
21 negotiating many, many site control documents,  
22 projects have their own particular requirements.  
23 I have worked on projects where landowners were  
24 very specific about weeds and weed control, and  
25 they were very particular about dirt, you know,

1 not being moved, even from turbine location,  
2 maybe, to turbine location. So I don't know  
3 that you would necessarily jump to that  
4 conclusion at all.

5 I mean, I think there's a lot of  
6 correspondence, and usually that takes place  
7 with regard to specific landowner concerns or  
8 questions and, you know, making sure that  
9 information gets to the -- to the construction  
10 team or whoever it is. It is also really  
11 important, so you're not necessarily going to  
12 jump to that conclusion, no. It might just be  
13 there's some particularities about this  
14 particular landowner or this project.

15 I mean, there's all kinds of things,  
16 from cattle guards or moving of cattle, or I  
17 could go on and on and we could talk about it  
18 all day, about all the different requirements  
19 that come up.

20 Q (By Ms. Nagle) So in your expert  
21 opinion, this does not constitute knowing that a  
22 mineral lease could be required; is that  
23 correct?

24 A That's correct.

25 Q What would constitute knowing that a

1     **mineral lease is required?**

2           A     Well, I think we certainly have clarity  
3     now -- right? -- because we have the Tenth  
4     Circuit opinion. And I think I've already said  
5     that I feel like that's extraordinary in my  
6     experience; right? I mean, you're just not used  
7     to seeing that. So if I'm sitting on this  
8     development team, I'm not going to make the  
9     assumption that we need to go (inaudible).

10           THE REPORTER: Need to what?

11           THE WITNESS: I'm not -- I'm not  
12     expecting that it's going to lead to a develop  
13     -- or pardon me -- a mining lease.

14           Q     **(By Ms. Nagle) So in your expert**  
15     **opinion, Aaron Weigel, in his e-mail on May**  
16     **22nd, 2014, is incorrect?**

17           A     Incorrect as to?

18           Q     **Well, he states, quote, it is very**  
19     **important that we not remove any soil from the**  
20     **project site or use site materials in lieu of**  
21     **materials we would typically buy off site in**  
22     **developing a wind project. Osage Nation has**  
23     **mineral rights -- mineral rights for the project**  
24     **lands, and removal of soil, especially for**  
25     **commercial gain, could constitute mining, end**

1 quote.

2 And you're saying that doesn't  
3 constitute knowledge that a lease would be  
4 required, and I'm just trying to understand from  
5 your expert opinion where Aaron got it wrong.

6 A Well, I think also he's saying removing  
7 it from the property, which we're not going to  
8 be removing anything from the property; right?

9 And I think that comes back to my statement  
10 about the concerns of landowners and issues that  
11 they might have. I -- you know, I can't comment  
12 on whether he got it right or whether he got it  
13 wrong, but I would just say from this  
14 correspondence, this very narrow review -- and,  
15 again, I haven't seen this before, but from this  
16 very narrow review, I'm not going to assume that  
17 we're going to need a mining lease; right?

18 That's not going to occur to me, because we're  
19 not planning to remove anything from the site.

20 Q Uh-huh. And in addition to removing, he  
21 also refers to "or use site materials in lieu of  
22 materials we would typically buy off site in  
23 developing a wind project."

24 Do you have an understanding of whether  
25 or not the developer in this instance,

1       **defendants, used site materials from the Osage**  
2       **mineral estate in lieu of materials they could**  
3       **have otherwise purchased off site?**

4           A     I need to read that.

5           **Q     Sure. Take your time.**

6           A     Yeah, I still -- I'm not in Aaron's  
7       head, so I don't know exactly what, you know, he  
8       was trying to convey, but in my mind, this is  
9       not going to lead me to believe that you need a  
10      lease or for -- or that's going to constitute  
11      mining.

12          **Q     Okay. And so do you have an**  
13       **understanding, in forming your expert opinion,**  
14       **whether or not defendants used on site materials**  
15       **from the Osage mineral estate that they could**  
16       **have otherwise purchased off site?**

17          A     I think they did in the foundations.

18          They used the material that was there, correct.

19          **Q     And in your expert opinion, despite this**  
20       **email, defendants did not know in May of 2014**  
21       **that that could trigger the need for a lease; is**  
22       **that correct?**

23          A     No, I -- because I think what they're  
24       saying is, in lieu of materials we would  
25       typically buy off site. But, you know, I -- no.

1           Q     So -- okay.  So in your expert opinion  
2 where you conclude that defendants did not know  
3 that a lease was necessary for their use of  
4 minerals from the Osage mineral estate, what  
5 evidence or documentation, or what is -- what  
6 have you relied on to formulate that expert  
7 opinion that they did not know?

8           A     I'm sorry.  Could you -- could you  
9 repeat the question?

10          Q     Sure.  So you stated earlier -- I  
11 believe you stated that defendants did not know,  
12 prior to commencing construction, that a lease  
13 would be required.  I also understand that  
14 you've looked at this email and you've said this  
15 also doesn't constitute knowledge that a lease  
16 was required.  I'm asking you, what evidence did  
17 you look at that substantiates that they did not  
18 know that a lease was required?

19           MS. STEVENSON:  Object to form.

20           THE WITNESS:  Well, I think if you  
21 continue reading this, it says the Osage Nation  
22 has minerals and that if they're removed for  
23 commercial gain or if they're taken off and are  
24 sold.  And I -- I'm not sure that I understand  
25 what you're asking.

1           Q    (By Ms. Nagle) Okay. That's fine. I  
2    think we can be done with that document. All  
3    right. So what is your definition of  
4    "reasonable due diligence"?

5           A    Of reasonable due diligence, with  
6    respect to a project as a whole or in regard to  
7    -- what are you meaning in regard to?

8           Q    Well, in regards to this project, what  
9    would constitute reasonable due diligence?

10          A    As it pertains to what? Just the  
11    entirety of the project or...

12          Q    Do you have any opinion -- does your  
13    report opine on reasonable due diligence in any  
14    shape or form?

15          A    Not that I'm aware of.

16          Q    Okay. So you don't actually have an  
17    opinion in this case of whether or not  
18    defendants performed reasonable due diligence  
19    regarding the need to get a lease before they  
20    mined on the Osage mineral estate; is that  
21    correct?

22          A    No, I think my report is in response to  
23    the FTI report -- correct? -- on the -- on the  
24    compensation. I'm not sure that I'm -- that I'm  
25    done commenting on the -- on the due diligence,

1 because I think we're past that. So I don't  
2 know. What I think of due diligence, it's a --  
3 it's a very large -- you know, a box of  
4 material, so I'm not trying to be difficult; I  
5 just -- if you want me to give you some  
6 parameters or you want to give me some  
7 parameters, I'm happy to try to do that.

8 Q No, I think it's fine. I mean, just to  
9 clarify, so your expert report does not opine on  
10 whether or not defendants adequately performed  
11 due diligence; is that correct?

12 A I'm not trying to opine on that, no.

13 Q Okay. I am now going to go back to your  
14 expert report, so let me share my screen. And  
15 so here we are, and I am looking at Page 4 of  
16 your report and specifically down here under  
17 Summary of Expert Opinion. And I note here in  
18 your second statement, "Second, if a wind energy  
19 developer was clearly apprised, prior to  
20 construction commencing, that a mining lease was  
21 required to engage in ordinary turbine  
22 foundation excavation for a wind energy project,  
23 would the developer have practical and effective  
24 alternatives to using minerals so mined from the  
25 mineral estate in the construction of

1 foundations for the project?"

2 My question is -- to you is, what is  
3 your definition of "clearly apprised" here in  
4 your report?

5 A As I mentioned, in my work, we will make  
6 a request to an agency, could be to a bank, it  
7 could be to a utility, it could be to some  
8 entity, for when we'll say we're building the  
9 project and we're going to be crossing your  
10 easement or we need a subordination or what have  
11 you. And there's a specific exchange that  
12 happens with regard to documentation.

13 So I think in my view my expectation  
14 there is that there would be a clear request for  
15 some kind of a document, whatever it might be.

16 Q When you mentioned the clear request,  
17 who would the request be coming from?

18 A Normally, it's from the agency that you  
19 -- that you consult with; right? You contact  
20 the agency, we're building this project, here's  
21 all of our documentation. And then, you know,  
22 you -- then there's a -- then they will respond  
23 in kind by letting you know what documentation  
24 is required in order to be able to build the  
25 project.

1 Q So I am now going to introduce what I  
2 believe is going to be Exhibit 38, and let me  
3 just pull that up here really quick, so we are  
4 going to look at this. All right. Okay.  
5 Sorry, my apologies.

6 Okay. So this is -- Exhibit 38 is Bates  
7 stamped OSAGE WIND PRIV-000243. It is a letter  
8 dated October 9th, 2014, to Mr. Francesco  
9 Venturini, president of EGPNA, and it looks like  
10 it's from the superintendent of the United  
11 States BIA, the Department of Interior, Bureau  
12 of Indian affairs.

13 Ms. Centera, are you familiar with this  
14 document? Have you seen this document before?

15 A I have, yes.

16 Q I'll read here. It states, "You are to  
17 refrain from any further excavation of minerals  
18 until such time that you have obtained a sandy  
19 soil permit through the Osage agency."

20 In your expert opinion, would this  
21 constitute a situation where defendants were,  
22 quote, unquote, clearly apprised that a lease  
23 would be necessary prior to or continuing to  
24 excavate minerals?

25 A Well, I think what I would say is you

1 certainly would want to take a look at the  
2 information, you know. I think it's October, so  
3 that's conceivably in the middle of  
4 construction. So, you know, I think what I  
5 mentioned is that normally, as I said, these  
6 conversations take place early, and there's an  
7 opportunity to review all the material, look at  
8 all the material, understand the nature and  
9 extent of the information.

10 So I think at this -- at this stage,  
11 you're certainly going to want to ask for more  
12 information and understand what the basis is for  
13 -- for the request.

14 Q **In your expert opinion, when defendants  
15 were emailing each other memos in October of  
16 2013 stating that the Osage tribe had told  
17 defendants a lease was required, would that have  
18 been a moment when they should have asked for  
19 more information about obtaining a lease?**

20 MS. STEVENSON: Object to form.

21 THE WITNESS: I can't say because I  
22 wasn't there at the time, and I'm not sure what  
23 -- you kind of went out a little bit when you  
24 said that, when -- when was the exchange, you  
25 said? I'm sorry.

1 Q (By Ms. Nagle) Sure. That was Exhibit  
2 36 that we looked at earlier. If you'll give me  
3 a second, I'll pull it back up. Let's see here.  
4 Let me just find it really quick. Where did it  
5 go? Oh, here it is. Okay.

6 So if -- so I'm just -- I'm trying to  
7 understand when in -- when, in your expert  
8 opinion, defendants were apprised, if they were  
9 ever apprised, that there was a need for a  
10 lease. And, actually, let me just maybe stop  
11 and ask that question.

12 In your expert opinion, in this case  
13 where defendants -- have they ever been apprised  
14 of the need to get a lease for the mining of the  
15 Osage mineral estate?

16 A Were they -- clear -- well, I think  
17 certainly that the Tenth Circuit opinion --  
18 right? -- is that they needed to go back. So at  
19 that point, we had clarity, so I think certainly  
20 at that point. But I think, you know, that  
21 letter that you just showed -- I'm not familiar  
22 with this memo, so I really can't comment on  
23 that. But I think certainly the letter that you  
24 showed a moment ago is the first indication that  
25 I saw where the agency came in or some

1 representative, potentially, of the agency --

2 **Q Uh-huh.**

3 A -- and said that there needs to be  
4 something specifically provided; right?

5 **Q Uh-huh.**

6 A So, you know, that would be the first  
7 clear indication, perhaps, that there was a  
8 requirement. But I think at that late stage,  
9 you know, you're in the middle of construction,  
10 you're not necessarily going to stop  
11 construction, but you are going to go ahead and  
12 go back and then have a conversation; right?  
13 But I think that -- at least in my understanding  
14 of the documentation that I see, that was the  
15 first case where there was something that was  
16 put forth in terms of a requirement.

17 Now, I can tell you, too, in my  
18 experience that sometimes you come back with a  
19 lot of requests and some things don't apply;  
20 right? So you're certainly going to have a  
21 conversation around the -- whatever  
22 documentation is requested.

23 So -- and we find this even in our, you  
24 know, negotiations of crossing agreements or  
25 whatever kind of curative work might be done.

1 So I think that, no, I can't, again, comment on  
2 this memorandum, but if we're looking at some  
3 kind of a clear requirement that -- in that  
4 prior letter that you said, that's the first  
5 time that there was at least something put forth  
6 for the project to consider.

7 Q So in your expert opinion and in terms  
8 of formulating your expert report where you  
9 state that -- you discuss being clearly  
10 apprised, "Defendants were clearly apprised when  
11 the United States notified them of the need to  
12 get a lease in October of 2014, but they were  
13 not clearly apprised when the OMC informed them  
14 of this need in October of 2013"; is that  
15 correct?

16 MS. STEVENSON: Object to form.

17 THE WITNESS: What -- I didn't see the  
18 OMC -- the '13, when --

19 Q (By Ms. Nagle) Okay. So what we're  
20 looking at right here is what's been introduced  
21 as Exhibit 36, and I'll note the date is October  
22 31st, 2013. It's an internal memo from Sarah  
23 Stevenson to Bill Scott, the attorneys for  
24 defendants. And as we discussed earlier today  
25 at page Bates stamped 415, there's this

1 paragraph here stating, "The Osage tribe has  
2 indicated that it will assert Tradewinds Energy  
3 must receive a mining permit from the Osage  
4 Minerals Council in order to construct and  
5 operate the wind farm, on the grounds that the  
6 excavation and construction and permanent  
7 placement of the towers constitutes mining of  
8 the Osage mineral estate."

9 So my question to you is, just for  
10 purposes of your expert report, this is not  
11 being clearly apprised; correct?

12 MS. STEVENSON: Object to form, and the  
13 witness has already testified a number of times  
14 she has not seen this document, in this  
15 deposition. So I don't know if we need to  
16 continue asking her questions about her thoughts  
17 about the documents she's seeing for the first  
18 time today.

19 MS. NAGLE: Okay. Sure. I'm just  
20 trying to understand, she's used a terminology  
21 in her report, "clearly apprised," if this would  
22 constitute that. But if she can't opine on that  
23 today or ever, then we can also rest with the  
24 understanding that her expert report doesn't --  
25 doesn't extend to 2013 understandings, unless

1       she wants to answer whether or not this would  
2       satisfy the "clearly apprised" standard.

3               THE WITNESS: Yeah, I really can't  
4       comment on this memorandum out of context so --

5       **Q    (By Ms. Nagle) Okay. So in your expert**  
6       **opinion, just so I understand, defendants became**  
7       **clearly apprised in October of 2014?**

8               MS. STEVENSON: Object to form.

9               THE WITNESS: I'm not -- that was the  
10       first time that I'm aware of that a specific  
11       indication of documentation was put forth in a  
12       letter of that kind. That -- that's what I'm  
13       saying. I'm saying that you're going to stop  
14       and take a look at it and understand what's  
15       going on at that time.

16       **Q    (By Ms. Nagle) Uh-huh. So just so I**  
17       **understand, you used the words "clearly**  
18       **apprised" in your expert report, and -- and just**  
19       **so in your expert report, the date in which**  
20       **defendants did become clearly apprised was this**  
21       **-- when this letter was sent in October of 2014;**  
22       **is that correct?**

23               MS. STEVENSON: Object to form.

24               THE WITNESS: It's when they had  
25       information that there was a request put forward

1 for information. So I'm not sure that you would  
2 consider it clearly apprised, because you  
3 haven't had a chance to do your due diligence  
4 and understand all the different, you know,  
5 requirements.

6 Q (By Ms. Nagle) So -- and I'm not trying  
7 to be difficult here; I'm just trying to  
8 understand. So when you say, "clearly apprised"  
9 in your report, is it your expert opinion that  
10 defendants did not become clearly apprised until  
11 the Tenth Circuit issued its decision?

12 A I think at that point, you were clearly  
13 apprised of what the requirement was, yes.

14 Q But for purposes of your expert report,  
15 you aren't certain whether or not defendants  
16 were clearly apprised before the Tenth Circuit's  
17 decision; is that correct?

18 A If I was sitting in their shoes, knowing  
19 just the information that I have, I would not  
20 have known that, no.

21 Q Okay.

22 MR. ASHWORTH: I'm sorry. I didn't get  
23 the last part. What was the last part you said,  
24 ma'am? You were -- that you would not -- what  
25 did -- what did you say?

1                   THE WITNESS: I -- I would not have  
2 known, no.

3                   MR. ASHWORTH: You would not have known?

4                   THE WITNESS: I'm sorry. Can some --  
5 can -- Janna, can you repeat that back? Because  
6 I'm -- I don't want to misquote myself.

7                   THE REPORTER: That's what I heard.

8                   "If I was sitting in their shoes,  
9 knowing just the information that I have, I  
10 would not -- I would not have known that, no."

11                  MR. ASHWORTH: Sorry, I just didn't get  
12 it. It cut out.

13                  THE WITNESS: Sorry.

14                  Q    (By Ms. Nagle) Okay. Let's see here.  
15 Okay. Going back to Page 5 of your report -- so  
16 let me pull that up again. So now I'm on Page  
17 5, and I will share my screen so we can all see  
18 it.

19                  So, again, I know we're dealing with  
20 this "clearly apprised" language. Let's see if  
21 I can find it. Oh, here we go. Okay. Right.  
22 So you write here, "I have assessed the  
23 supporting documentation provided by Osage Wind,  
24 and all such evidence would support a finding  
25 that reasonable diligence would not have led a

1       knowledgeable wind developer to anticipate the  
2       need for a mineral lease prior to construction  
3       on the Osage Wind project."

4            **What is your definition of "anticipate"**  
5       **here and how you're using it in your expert**  
6       **report?**

7       A    I think it's just based upon my  
8       experience, based upon my experience in having  
9       worked on many projects and just understanding  
10      what typically constitutes mining, that it --  
11      you would not have concluded that you would need  
12      a mineral lease.

13       **Q    So is "anticipate" knowing with**  
14       **certainty that a lease is required? Is that**  
15       **anticipation?**

16       A    I -- knowing with certainty? I suppose.  
17      You know, I -- I think, you know, just kind of  
18      taking a step back from the project, if I'm  
19      walking into a project, you're going to try to  
20      anticipate as much as you can what's going to  
21      come up, what's going to be the subject of the  
22      due diligence.

23           And so based upon that experience and my  
24      knowledge and working knowledge of projects, I  
25      suppose that's what I mean, that I wouldn't have

1       expected that there would have been a need for a  
2       mineral lease. I mean, even taking into account  
3       everything -- you know, there's a lot of  
4       information that gets exchanged, there's a lot  
5       of information that gets talked about in  
6       preparation for projects.

7           **Q       Uh-huh.**

8           A       And these projects are difficult, and  
9       the amount of documentation is enormous that  
10      goes into putting all these projects together.  
11      So I think that's why -- if I'm thinking about  
12      this from my perspective, I think that's why  
13      understanding with clarity what those  
14      requirements are, you know, is really important.

15           So here I'd suppose I would equate  
16      "anticipate" to "expect."

17           **Q       And would being informed by -- in your  
18      experience in this field, would being -- if you  
19      were informed by a governmental agency that a  
20      lease is required, would that cause you to  
21      anticipate or expect that a lease is required?**

22           A       It really depends on -- on -- on the  
23      requirements. It depends on the -- on the  
24      standing, it depends on the jurisdiction. You  
25      know, there is a lot of things that come up

1 through the course of projects, so if you're  
2 asking me if you just, at face value -- you  
3 know, every single thing that comes up, you do  
4 you take that at face value and are you trying  
5 to solve that or address that? Not necessarily.

6 I mean, everything has to be looked at,  
7 it has to be synthesized, it has to be  
8 understood within the context of the project.  
9 So through the course of the county permitting,  
10 there is a series of documentation that are  
11 required. So I think in this the tribe had a  
12 different relationship and relationship to the  
13 project, so -- but -- but -- so just carte  
14 blanche every single request that's made, are  
15 you going to, you know, jump on it verbatim? I  
16 would say no. There is due diligence that  
17 happens, there's a -- there's a conversation  
18 that happens, does it really apply.

19 In some cases, there's requests that are  
20 made, but they may not necessarily apply. It  
21 depends.

22 Q In your experience, how many projects  
23 have you worked on where a governmental agency  
24 had stated a lease or permit was required where  
25 it was not actually required?

1 A I -- I can't give you a number on that.

2 I don't know.

3 Q Are you -- do you recall any instances  
4 where that happened?

5 A Where a lease was required? Not  
6 necessarily a lease, but there can be other  
7 provisions that, maybe, were required. There  
8 can be wetlands requirements, there can be  
9 recording of certain maps, there can be  
10 recording of survey maps, or there can be a  
11 whole bevy of things that come up.

12 And so I think, you know, sometimes  
13 there's requests that are made, and then, you  
14 know, there's a discussion that has to happen.  
15 I can't say every single case you're going to --  
16 you're going to do a lease, huh-uh.

17 Q Are you aware of any instances on  
18 projects where you've worked where the United  
19 States said a lease was required and actually  
20 the United States just got it wrong?

21 A I -- you know what? I'm not aware of  
22 the United States in that role, so no, no.

23 Q And are you aware of any instances where  
24 a tribal nation has stated that a lease was  
25 required for a project that you worked on and

1       **that tribal nation just got it wrong?**

2           A    I'm not aware of leases being  
3   negotiated. Well, let me -- let me backtrack on  
4   that, because that's not really correct, because  
5   we are going to negotiate leases for site  
6   control. So I'm not aware of it right off, no,  
7   I'm not aware of it right off. But I -- like I  
8   said, we work on multitudes of projects, so I  
9   can't speak to every single project.

10          Q    Uh-huh. And so in this particular case  
11   where we've now looked at documents today that  
12   show that, internally, defendants were  
13   discussing the need for a lease if on site  
14   materials were used in lieu of things to be  
15   purchased off site, the Osage tribe itself was  
16   saying a lease was required and the United  
17   States, what more in your expert opinion would  
18   be necessary to get to that place where you  
19   could say a reasonable wind developer would have  
20   anticipated that a lease was required?

21           MS. STEVENSON: Object to form.

22           THE WITNESS: Well, I think what we have  
23   said is that we had clarity around the lease at  
24   the point that the opinion was issued. And I  
25   think even in the opinion, they say that there

1 was some ambiguity around that. But because  
2 there's a requirement for them to rule in favor  
3 of the tribe, that they're going to rule in  
4 favor of the tribe.

5 So I think even in that case, you know,  
6 it's -- we're looking at a situation where it  
7 wasn't entirely clear. I think if you look at,  
8 certainly, the letter that was sent, that there  
9 was a question raised, and they said, you know,  
10 at some point -- but they don't really talk  
11 about a lease, they talk about a permit, I  
12 think, in that letter.

13 So then there seems to be some conflict  
14 there -- correct? -- or -- are you getting a  
15 lease, or are you getting a permit? I think --  
16 and, obviously, there's a lot of internal  
17 conversations that take place. That takes place  
18 routinely on projects, but it seems to me that  
19 even with respect to the request, it's a little  
20 bit in conflict -- right? -- because I think the  
21 Tenth Circuit opinion said a lease.

22 So I think what you'd have to do is go  
23 back and do diligent -- do your due diligence  
24 and try to understand. But it seems to me that  
25 there's a fair amount of, you know, ambiguity

1 all the way around, that I don't know that there  
2 was clarity.

3 I mean, you know, if everything was  
4 clear, why would we have a lawsuit; right? I  
5 mean, if you could point to something clearly  
6 and say, here is what you need to do, why would  
7 we have filed litigation? I mean, this is --  
8 you know; right? You would just be able to  
9 point to something and say, here it is.

10 But in this case, we had to rely upon  
11 the court to come in and say, you need a lease  
12 because of this particular. So I think in my  
13 view, if I take a step back, you know, I --  
14 clearly, there's some -- you know, there's  
15 ambiguity here -- correct? -- that we had to  
16 rely upon some other third party to come in and  
17 look at all the facts and say, you know -- so if  
18 I'm -- again, if I'm in the developer seat,  
19 certainly now we have hindsight, and we're much  
20 smarter now for doing a debrief on this; right?  
21 We're going to know what we're not going to do  
22 the next time, or what have you; I don't know.

23 But, you know, we're all a lot smarter  
24 now, but we have the benefit of that, you know,  
25 looking back. So I think if I'm sitting in this

1 seat, what you're asking me to do, that --  
2 and/in trying to understand these facts, I  
3 think, you know, I'm not -- I'm not sure that  
4 it's clear.

5 Q (By Ms. Nagle) Okay. Thank you. I  
6 think that really about wraps up my questioning  
7 for today.

8 MS. NAGLE: So I don't -- I know we've  
9 been going for quite a while, and I'm sure at  
10 some point folks will want to eat lunch, but I  
11 don't know, Sarah and Stuart, what your thoughts  
12 are, and certainly want to take into account the  
13 witness's need to eat and take a break so -- but  
14 I think -- I think I'm ready to pass the  
15 witness.

16 MR. ASHWORTH: Ms. Centera, my name is  
17 Stewart Ashworth, and I'm an attorney with the  
18 U.S. Attorney's office. I do have several  
19 questions I would like to ask, and I anticipate  
20 it being in excess of an hour. We have been  
21 going for a while, and I don't know what time it  
22 is over there, if you've already had lunch, if  
23 you would, you know, want to take a five-minute  
24 break and keep on going, or if you want to take  
25 a lunch break. It's up to you.

1                   THE WITNESS: For me here, it's just  
2 after 11:00, so we could probably go until what,  
3 for me, is 11:30, maybe, and then take a break  
4 at that time if that works.

5                   MS. STEVENSON: And, Stuart, this is  
6 Sarah. I think we have lunch coming at about  
7 11:30 or 11:45, so I think it may make sense if  
8 we want to get started, and then we can take a  
9 little longer break so the witness can eat when  
10 it arrives.

11                  MR. ASHWORTH: Yeah, that works for me.  
12 We'll just go ahead and get started.

13                   CROSS EXAMINATION

14 BY MR. ASHWORTH:

15 Q    **Ma'am, if you could --**

16                  MR. ASHWORTH: Michelle, can you pull up  
17 the reports?

18                   (Discussion off the record)

19 Q    **(By Mr. Ashworth) Ms. Centera, as we**  
20 **are pulling up your report, I believe it was**  
21 **previously marked -- or marked during your**  
22 **deposition as Exhibit Number 35, I believe.**

23                  As that -- as that report's being pulled  
24 up, who did Osage Wind retain, you or TerraPro  
25 Solutions?

1       A    Well, I -- I don't -- you know, I work  
2   under the umbrella of my company, so they would  
3   have retained TerraPro Solutions. I would have  
4   been the one issuing the report, so -- but, you  
5   know, I don't necessarily work independently; I  
6   work under the umbrella of my company.

7 Q Okay.

8 (Discussion off the record)

9 Q (By Mr. Ashworth) So, Ms. Centera, I  
10 say that just because right here in the first  
11 sentence of your report, it says, "Kimberlee  
12 Centera, TerraPro Solutions, has been retained  
13 by Osage Wind, LLC."

14 It's your opinion that really they  
15 retained you and TerraPro, it's one and the  
16 same, pretty much, as the expert in this case;  
17 is that correct?

18 A Yes.

19 Q Okay. Is there anyone else at TerraPro  
20 Solutions who have helped or assisted you in  
21 forming your opinions?

## 22 A In forming my opinions?

24           A    No, I -- no, I had help with the report,  
25 but in terms of forming the opinions, these are

1 my opinions.

2 Q Okay. And when you say that you've had  
3 help with your report, are you saying that you  
4 had help with someone -- by someone drafting  
5 your reports -- drafting your report?

6 A Drafting the report, correct.

7 Q Okay. Does that mean you had help with  
8 someone typing the report or someone actually,  
9 you know, putting opinions on the paper, doing  
10 research?

11 A Typing the report and assisting with  
12 some of the research, yes.

13 Q Okay. Who would that have been?

14 A That would have been Brittany Newsome.

15 Q Britney Newson?

16 A Newsome.

17 Q Newsome?

18 A Yes.

19 Q When did Osage Wind retain TerraPro as  
20 an expert in this case or, you know, as an  
21 expert?

22 A Gosh, the exact time, I want to say it  
23 was shortly before the report -- maybe around  
24 the middle or end of September of 2020.

25 Q Okay.

1           A    I would -- I would estimate. I don't  
2 know the exact date.

3           Q    In your report -- well, first off, in  
4 you report you refer to TerraPro Solutions as  
5 TPS. I guess for purposes of your deposition,  
6 if I say, "TPS," you would understand that I'm  
7 referring to TerraPro Solutions. Is that okay?

8           A    Yes.

9           Q    Okay. In your report the -- the second  
10 paragraph, second full sentence, it says,  
11 "Centera is the president and CEO of TPS, a  
12 leading risk management consulting firm  
13 specializing in the development, financing,  
14 construction, and operation of wind" -- I'm  
15 sorry -- "renewable energy projects."

16           Did I read that correctly?

17           A    I'm sorry. Where are you? Yes,  
18 president, yes, that looks correct.

19           Q    And that's, again, the second sentence  
20 of the second paragraph of your report on the  
21 first page?

22           A    Correct.

23           Q    Okay. Is TPS a self-described leading  
24 risk management consulting firm relative to  
25 renewable energy products, or did someone else

1       **classify TPS as that?**

2           A    Well, you could ask our clients. Well,  
3           I suppose it's -- it's -- it's both, our  
4           clients, but also self-described, you said?  
5           Self-described?

6           **Q    Yeah.**

7           A    It's both.

8           **Q    When you say, "leading," are you**  
9           **referring to, like, how big the size is, the**  
10           **market share of TPS? What are you saying when**  
11           **you're saying, "leading"?**

12           A    Leading, I would say in terms of  
13           experience. There is very -- there is not a lot  
14           of people that have, you know, almost 30 years  
15           of experience in renewable projects like I do.

16           **Q    Okay. What would you say is the**  
17           **percentage of market share that TPS holds**  
18           **relative to consulting on renewable energy**  
19           **projects?**

20           A    You know what? I don't know. I -- you  
21           know, I know we have some of the largest  
22           renewable companies in the world that are our  
23           clients, but I can't tell you what our market  
24           share is. I don't -- I don't know that offhand.

25           **Q    Is TPS in the top 10% -- I'm sorry.**

1       **Scratch that.**

2                   **Is TPS in the top ten largest consulting**  
3       **firms by size in the U.S., relative to renewable**  
4       **energy?**

5           A    No, no, not at all.

6           Q    You know, I'm only saying this -- is  
7       because I Googled risk management consulting  
8       firms for renewable energy projects in the  
9       U.S., and I got numerous pages of search  
10      results. And I kind of stopped, after Page 12,  
11      trying to search for TPS, and I didn't find it.  
12      Is that at all -- does that seem about right;  
13      there's that many firms in the industry?

14       A    You know what? I -- I have no idea. I  
15      -- you know, without knowing who you were --  
16      what kind of companies you were looking at, I --  
17      I don't know, yeah.

18       Q    Okay. How many employees does TPS  
19      currently have?

20       A    We have 14.

21       Q    14?

22       A    Uh-huh.

23       Q    Let me rephrase that. How many  
24      employees does TPS have that is -- does not  
25      include you or your family members?

1           A     Oh, does not include me or family  
2     members? I would say maybe four.

3           Q     **I'm sorry. Does not include family**  
4     **members?**

5           A     Does not include family members, I would  
6     say maybe about four.

7           Q     **Okay. You indicate in your report, I**  
8     **have seen --**

9                    MR. ASHWORTH: Scroll down a little bit  
10    more. I'm sorry, it's right there. That's  
11    fine.

12           Q     **(By Mr. Ashworth) It says, "Centera" --**  
13    **kind of towards the top, that's fine. It says,**  
14    **"Centera, together with TPS, is overseeing**  
15    **development over ten gigawatts of energy**  
16    **projects, including the 2.5 gigawatt tax equity**  
17    **financing transaction that closed in April of**  
18    **2020." First off, 10 GW, that does mean ten**  
19    **gigawatts; is that correct?**

20           A     That does, yes.

21           Q     **Okay. How much of the ten gigawatts**  
22    **would you say relates to wind energy projects?**

23           A     I would say well over half. I would say  
24    well over half. I would also say, Stuart --  
25    Stuart is your name?

1           **Q    Yes.**

2           A    Just for reference purposes, 13 -- about  
3    13% of renewables is women, and --

4           **Q    Okay.**

5           A    -- predominantly, those are technical  
6    jobs. So the percentage of companies that have  
7    women ownership, women on the board, women  
8    ownership is even smaller than that.

9                   So if you're looking to compare us in  
10   the industry, you're going to have a hard time  
11   doing that, because women represent -- and  
12   especially female-owned businesses like mine  
13   that are private, a very -- are very limited in  
14   the renewable business, which is why we're a  
15   little bit of an anomaly in terms of who we are  
16   and in our role, in that we represent so many of  
17   the major renewable companies in the world, one  
18   of which is NG.

19                   And I'm sure if you did research, you  
20   saw that they're a very formidable, you know,  
21   company. We worked on seven of the 11 projects  
22   that comprised that financing, most of which  
23   were wind. I would say because wind has been  
24   around longer in terms of a renewable resource,  
25   that most of that ten gigawatts you'll find is

1 going to be wind -- will be wind.

2 Solar really has only been predominant  
3 probably since maybe 2007, 2008, if that helps  
4 you.

5 Q Sure, no, I appreciate that. Let me  
6 pull up another exhibit. One second.

7 MR. ASHWORTH: Mary Kathryn, do you know  
8 what exhibit number we left off with? I forgot  
9 to write it down.

10 MS. NAGLE: I believe the last exhibit I  
11 entered was 38.

12 MR. ASHWORTH: Okay. I didn't know if  
13 it was 37 or 38.

14 MS. NAGLE: Yeah, 38.

15 Q (By Mr. Ashworth) I'm going to show  
16 what you I'm going to mark as Exhibit Number 39.  
17 I'm sorry. 38.

18 THE REPORTER: 39.

19 MS. NAGLE: 39.

20 MR. ASHWORTH: Exhibit 39?

21 MS. NAGLE: Yes.

22 Q (By Mr. Ashworth) This is -- I pulled  
23 from your website, and it's a project list. On  
24 the second page -- first off, this is a project  
25 list. You also carry a project list in your

1 expert report. Do you know if these project  
2 lists, the one that I pulled from your website  
3 yesterday is more current than what is in your  
4 report?

5 A I want to say the one in my report, in  
6 my expert report is going to be more current.

7 Q Okay.

8 A Than the one on the website.

9 Q Okay.

10 (Discussion off the record)

11 Q (By Mr. Ashworth) On this project list  
12 that I pulled from your website, it shows that  
13 your presence -- it lists 6,000 plus wind  
14 megawatts developed that translates to six -- to  
15 approximately six gigawatts; is that correct?

16 A Right.

17 Q And earlier I think you said that there  
18 was more than -- more than half of your ten  
19 gigawatts is -- represents wind?

20 A Right.

21 Q Okay. Earlier you testified that TPS  
22 is, you know, a risk management consulting firm  
23 that specializes in financing of renewable  
24 energy. I wasn't quite clear any the earlier,  
25 but I just want to make sure I understand what

1       **TPS does or at least what it specializes in.**

2                   **Is it your testimony that TPS consults**  
3                   **with companies when it comes to financing of**  
4                   **renewable energy sources, financing them; is**  
5                   **that correct?**

6           A    Finance -- so -- so we specialize in  
7           helping companies prepare their projects for  
8           financing. We do a lot more work than that. We  
9           do site acquisition work, and we basically do  
10          full spectrum work across all real estate and  
11          title. So -- but our specialty is finance, if  
12          that makes sense.

13               So if you have a project and you bring  
14          me a lot of project assets, then we can help you  
15          assemble all those assets and -- for a  
16          particular project and get that prepared for  
17          financing due diligence. Does that kind help to  
18          answer that?

19           Q    **That does. So I guess in terms of that,**  
20          **you would work with a client to prepare the**  
21          **paperwork for them to get their financing stuff;**  
22          **is that correct, as far as the process?**

23           A    Part of the process, correct.

24           Q    **When the project is financed and during**  
25          **the construction phase, TPS doesn't oversee the**

1      **project, does it, at that point?**

2            A    We don't oversee the project.  We may be  
3    involved in certain phases of the project when  
4    it gets into construction.  It just depends on  
5    the nature of the financing and if there's --  
6    you know, so it depends on the nature of the  
7    financing to how much we get involved during  
8    construction.

9            Q    **Okay.  TPS wouldn't act as a general  
10   contractor during construction, would they?**

11          A    No, we would not, no.

12          Q    **Okay.  What aspects would TPS be  
13   involved with during the construction phase?**

14          A    We would be coordinating between the  
15   construction team and the ALTA survey team, and  
16   a lot of times maybe the boots on the grounds in  
17   terms of what's happening in the field.  A lot  
18   of times when you're in construction, things can  
19   change, and so we're going to be helping to  
20   coordinate that and make sure if the arching  
21   here that happened to the project, be it the  
22   design or something in the field, that we're  
23   apprised of that.  We make sure that -- you  
24   know, if an easement gets moved, for instance,  
25   that it's still within the boundaries of the

1 leasehold estate, make sure it's still subject  
2 to all of the -- of the debt security documents.

3                   If -- depending on the nature of the --  
4 of the loans that secure the construction, if  
5 there's different date down requirements for the  
6 title, then we'll be involved in that. So our  
7 -- certainly our role is much more active  
8 leading up to the start of construction, and we  
9 -- but we're kind of -- we have a seat at the  
10 table, in terms of just monitoring and making  
11 sure that, at least from the standpoint of any  
12 crossing agreements or any different agreements  
13 that were agreed to, coordination with  
14 landowners, that kind of thing, a lot of times  
15 we're working on that during construction.

16           **Q    Okay. So TPS would be more busy in the**  
17 **steps leading up to construction, and then they**  
18 **have some involvement, depending on the project,**  
19 **during construction; is that correct?**

20           **A    Correct.**

21           **Q    And if they were to be involved during**  
22 **the construction -- I'm sorry. Scratch that.**

23                   The instances when TPS would be involved  
24 during the construction phase, that's a small  
25 part relative to what TPS does; is that correct?

1           A    Generally speaking, yes.

2           **Q    Okay. Would you hold yourself out to be**  
3   **an expert in the industry when it -- in regards**  
4   **to overseeing the construction phase of**  
5   **renewable energy projects?**

6           A    Overseeing the construction phase? As  
7    it relates to my particular niche of work for  
8    real estate and title, yes. I'm not going to  
9    purport to be an expert on construction,  
10   obviously, because I'm not an EPC, I'm not an  
11   engineer. But as to my particular piece of  
12   work, yes.

13           **Q    Would you hold yourself out to be an**  
14   **expert in regards to whether permits or licenses**  
15   **or leases are required to be obtained relative**  
16   **to the construction phase of renewable energy**  
17   **projects?**

18           A    As it relates to the real estate and  
19   title, generally, yes.

20           **Q    Okay. How would it relate to the title**  
21   **issues?**

22           A    Well, normally, we are -- part of the  
23   work that we do is to obtain all the different  
24   title reports for a particular project. So if  
25   it's a wind project, in this case, you've got

1       about 8,000 acres, I believe. We work on some  
2       wind projects that are 25,000 acres, for  
3       instance, so we will look at all that title  
4       work. We prepare schedules, and then we make  
5       sure that, you know, we interface with the title  
6       company, with the lenders. Basically all the  
7       different exceptions have to be addressed in  
8       some form for the financing.

9                   So by saying some form, there's either  
10       some kind of a document or some kind of coverage  
11       that happens, so we maintain and monitor all  
12       that --

13       Q       **Okay.**

14       A       -- respect, yes.

15       Q       **Would you hold yourself out as being an**  
16       **expert relative to determining whether or not a**  
17       **lease or permit is required to be obtained**  
18       **relative to a wind energy project?**

19       A       For real estate and title, yes.

20       Q       **Okay. You believe that if a lease is**  
21       **needed or a permit is needed relative to land**  
22       **title, you would be an expert into -- in the**  
23       **determination whether one's needed or not?**

24       A       Yes.

25       Q       **Okay. Would you equate the need to**

1 obtain a mineral lease in this instance -- have  
2 anything to do with title review that you would  
3 be doing?

4 A Yeah, I mean, I think you're -- you're  
5 certainly going to be looking at the fact that  
6 there's a severance on -- of the mineral estate  
7 and understanding what that is. And then  
8 there'll be some kind of an analysis done as to  
9 what needs to happen. I think, you know, as I  
10 mentioned earlier, I'm not accustomed to seeing  
11 leases. Normally, there would be some kind of a  
12 surface use agreement or some kind of an  
13 accommodation agreement or some other kind of  
14 agreement that would be negotiated.

15 I've not seen leases negotiated, per se,  
16 for mineral estates, just because I think also  
17 from a financing standpoint, any time there's  
18 any lease other than wind energy, then we have,  
19 typically, a lender issue; right? So if I have  
20 some obscure -- if there's a lease for pasture  
21 negotiations -- okay? -- I'm going to have to  
22 explain that to my lender, and I'm going to have  
23 to explain how that's not an issue.

24 Lenders are not used to seeing leases,  
25 because their go-to position is, it's going to

1 interfere with the project; right? So they're  
2 concerned about that. So from my standpoint,  
3 I'm not going to negotiate a lease, because I  
4 know a lease is much more difficult to get title  
5 insurance over, to negotiate with my lender.

6 So I am going to negotiate something  
7 that's more customary in terms of curative  
8 documents. And I've talked a lot about, you  
9 know, subordinations, crossing agreements, or  
10 crossing permits, and those kinds of things. I  
11 think when it comes to financing, party --  
12 financing parties are accustomed to seeing  
13 those, and so it's much easier to get everyone  
14 comfortable with that.

15 So I wouldn't necessarily go to a lease,  
16 because I know a lease is -- our lenders are  
17 maybe not necessarily going to be in favor of  
18 that, especially if it relates to minerals and  
19 they're accustomed to seeing different  
20 documentation.

21 Q Okay. I don't think that's particularly  
22 responsive, but let me reask it this way.

23 Relative to this case, would you hold  
24 yourself out to be an expert to opine as to  
25 whether a lease was or was not needed under the

1       **facts and circumstances in this case?**

2                   MS. STEVENSON: Object to form.

3                   THE WITNESS: Yes, I would say yes.

4                   Q     (By Mr. Ashworth) You are an expert;

5                   **your opinions are authoritative in this case.**

6                   **Is that your opinion as to whether or not a**

7                   **lease should be -- a mineral lease should have**

8                   **been obtained?**

9                   A     As to my title curative background, yes.

10                  Q     Okay. Have you ever done work for any  
11                   of the defendants, and that is Enel Green Power  
12                   North America, Enel Kansas, or Osage Wind? Have  
13                   you ever done any work for them?

14                  A     Other than the work here, no.

15                  Q     Okay. And, you know, just for the  
16                   purposes of your deposition, I may collectively  
17                   refer to the defendants as Enel Green and vice  
18                   versa. Would that cause any confusion to you,  
19                   and would you understand if I say, "Enel Green,"  
20                   I'm really referring to really the defendants?

21                  A     Okay. Right. No, that's not a problem.

22                  Q     Okay. What do you know about Enel  
23                   Green?

24                  MS. STEVENSON: Before -- I did want to  
25                   let you know that our lunch did arrive, so if

1 you want to come to a stopping point, that would  
2 work (inaudible).

3 THE REPORTER: I'm sorry. I didn't hear  
4 the last part.

5 MR. ASHWORTH: Let me finish this --  
6 sure. Let me finish this last question, then we  
7 can go on a break.

8 THE WITNESS: Okay.

9 Q (By Mr. Ashworth) Ms. Centera, what do  
10 you -- what do you know about Enel Green?

11 A I know that they develop renewable  
12 projects across the U.S., similar to a lot of  
13 the other parties that we work with or that we  
14 talk to.

15 Q Do you know anything about their market  
16 share in the U.S.?

17 A I do not, no.

18 Q Do you know -- I'm sorry. Were you  
19 finished?

20 A (Nods head)

21 Q Do you know anything about how big they  
22 are in terms of, you know, are they a big player  
23 in the energy -- renewable energy sector?

24 A Well, I'm not really sure what you mean  
25 by "big," but no, I don't know.

1           Q    Do you know if they're in the top ten  
2   renewable energy companies?

3           A    I wouldn't be surprised, but I don't  
4   know that for a fact.

5           Q    Okay. Your -- TPS isn't a leading risk  
6   management company in the renewable energy  
7   sector, and it's your opinion you don't know --  
8   you wouldn't be able to estimate or give a basis  
9   of how big Enel Green is in terms of the  
10   industry; is that correct?

11          A    I'm -- so which one are you asking me?  
12          I'm sorry. Are you asking me about my company,  
13   or are you asking me about Enel?

14          Q    No, I just -- you know, expecting that  
15   if you were to hold yourself out as a leading  
16   risk management consulting firm in the renewable  
17   energy field, I just would assume you-all would  
18   kind of have a basis or knowledge of the players  
19   in the industry, and I assume that you don't; is  
20   that correct?

21           MS. STEVENSON: Form.

22           THE WITNESS: Well, I didn't say that I  
23   don't know all the players in the industry. I  
24   certainly do. I mean, I -- I know our client  
25   base. Do I know all the -- you know -- you

1 know, you're asking a difficult question, just  
2 from the standpoint that, you know, renewable  
3 companies have different presences in different  
4 markets, you know.

5 Enel, I believe, focuses primarily on  
6 wind power and -- at least that's my  
7 understanding. And many companies for  
8 diversification have moved over to solar. And  
9 so as far as I know, I think Enel is still  
10 primarily in the wind space.

11 So from that standpoint, I think they  
12 have kind of an interesting business model, you  
13 know. But I don't have to know -- in order to  
14 be a risk expert, you know, I'm not sure that I  
15 need to know, you know, what their -- you know,  
16 what their market share is. I mean, the way  
17 these projects are financed, all these projects  
18 are -- you know, most all of them are financed  
19 on a non-recourse basis.

20 So what that means is that there's  
21 recourse only to the projects, and that's why  
22 the financing is so important. Because if  
23 you're a lender and you're counsel representing  
24 the lender, the only rights that you're going to  
25 have to be able to enforce against are against

1 the project.

2 So, certainly, to the extent that a  
3 company might be large or small, is going to be  
4 a factor in some of these -- of these projects.

5 But more importantly is going to be the -- the  
6 project itself and the basis of the project  
7 itself. And that's why I mentioned earlier  
8 that, you know, the parameters of the project  
9 are important, understanding the specific  
10 project parameters.

11 So, now, if you're a large player, can  
12 you negotiate a better deal and -- there's a lot  
13 of things that are going to happen there.  
14 You're going to get pushed around a lot more if  
15 you're smaller.

16 So I see a lot of different things. We  
17 work with some of the largest companies in the  
18 world, many of which are disclosed on our  
19 website, so -- but I think that's really, you  
20 know, there's a lot of different factors that  
21 impact companies, their business model, how they  
22 finance projects, all that kind of thing.

23 I haven't worked with Enel, so I'm not  
24 privy to all those different details.

25 MR. ASHWORTH: I think we're at a great

1 stopping point for a lunch. Do we want to do 30  
2 minutes, Mary Kathryn?

3 MS. NAGLE: That works for me or, Sarah,  
4 did you want more time?

5 MS. STEVENSON: Can we do 45?

6 MS. NAGLE: That works for us.

7 MR. ASHWORTH: Okay. 45 minutes.

8 (Lunch break at 1:39 p.m., resumed at 2:28 p.m.)

9 Q (By Mr. Ashworth) Ma'am, we're back on  
10 the record. We took a 45-minute break, lunch  
11 break, and I understand you already had lunch  
12 delivered.

13 During the break, did you have a time to  
14 consider your previous testimony today and want  
15 to make any changes?

16 A Yeah, I'm not sure what you mean.

17 Q Sure, sure.

18 A Yeah, I mean, not -- not -- not at this  
19 stage, that I'm aware of.

20 Q Sure. During the break, did you speak  
21 with counsel for the defendants about your  
22 testimony?

23 A Yes.

24 Q What in particular about your testimony  
25 was discussed?

1                   MS. STEVENSON: I'm going to object to  
2 the extent it seeks attorney-client privileged  
3 information and direct the witness not to  
4 respond.

5                   Do you want to rephrase your question?

6           **Q (By Mr. Ashworth) You can go ahead and**  
7 **answer.**

8                   MS. STEVENSON: I directed her not to  
9 respond with attorney-client privileged  
10 information.

11                  MR. ASHWORTH: I'm sorry.

12                  Attorney-client privileged?

13                  MS. STEVENSON: That's right.

14                  MR. ASHWORTH: I'm sorry. I didn't -- I  
15 didn't hear. I don't know if the court reporter  
16 heard it either. What privilege are you  
17 asserting?

18                  MS. STEVENSON: The trial preparation  
19 protection for communications between the  
20 attorney's counsel and -- or between -- excuse  
21 me -- between the parties' counsel and an expert  
22 witness would be -- that are retained by party  
23 for litigation. So I'm directing her not to  
24 discuss our specific communications about her  
25 testimony.

1                   MR. ASHWORTH: Sure. During -- when the  
2 deposition starts and until it ends, that, you  
3 know, objection does not -- it doesn't exist.  
4 It's waived. When it -- communications --  
5 unless the report -- involves her actual report  
6 and the preparation of the report, you know --  
7 but we will -- I guess we'll continue, and I  
8 guess we can take this up with the court, and to  
9 the extent we need to reopen this so I can reask  
10 that question, that's fine.

11                  And I'm sure the defendants wouldn't  
12 mind paying that -- those fees.

13                  **Q (By Mr. Ashworth) Ma'am, during the**  
14 **break, the lunch break, our 45-minute break,**  
15 **even though I'd asked for 30 minutes, is there**  
16 **anything that was discussed that would cause you**  
17 **to want to change your testimony that you**  
18 **previously testified to today?**

19                  A    No.

20                  **Q    Okay. Have you spoken with any of the**  
21 **employees of Enel Green before?**

22                  A    Have -- before ever? Ever, you mean?

23                  **Q    Yeah, before today.**

24                  MS. STEVENSON: And I'm going to object  
25 to the form of this question, because Enel Green

1 is a defendant. Are you -- which specific --

2 MR. ASHWORTH: Okay. We're only doing  
3 -- okay. Ms. Stevenson, we're only doing,  
4 object to the form of the question. If you  
5 would like to add a narrative, I will call a  
6 judge. Okay. That's clearly stated that it is  
7 object to the form only, and that's it. We'll  
8 move on.

9 MS. STEVENSON: I'll object to the form.

10 Q (By Mr. Ashworth) Okay. Ms. Centera,  
11 you can go ahead.

12 A I'm sorry. Could you reask the  
13 question, please?

14 Q Sure. Have you ever spoken with an Enel  
15 Green employee before your deposition today?  
16 And that's Enel Green North -- Power North  
17 America, Enel Kansas, Osage Wind, just Enel  
18 Green, in general.

19 A Not that I'm aware of, no.

20 Q Okay. Have you or TPS ever corroborated  
21 on a project with Enel Green before?

22 A No, we have not.

23 Q Have you ever applied for or attempted  
24 to solicit business from Enel Green before?

25 A Gosh, myself in particular, I don't

1 believe so, no.

2 Q **What about TPS?**

3 A You know, it's possible. I mean, we  
4 send out emails to, you know, people all across  
5 the industry, so it's possible, marketing  
6 emails. So it's possible someone on the  
7 marketing team has sent out some email at some  
8 point. I can't point to anything in particular.

9 Q **Is there any possibility that TPS will  
10 solicit business from Enel Green in the future?**

11 A I suppose it's possible, sure.

12 Q **Is there any desire that -- scratch  
13 that.**

14 **Is it your belief that providing -- that  
15 by -- scratch that.**

16 **Is it your belief that by providing  
17 favorable testimony to Enel Green, that TPS may  
18 get a contract with TPS -- I'm sorry -- with  
19 Enel Green in the future?**

20 MS. STEVENSON: Object to form.

21 THE WITNESS: No, no. We have plenty of  
22 clients and lots of business. I haven't -- I've  
23 built my business on integrity, and that's why I  
24 have the business that I do.

25 Q **(By Mr. Ashworth) Okay. Jennifer**

1 Purczynski -- I don't know if I'm saying that  
2 correctly. Jennifer Purczynski,  
3 P-u-r-c-z-y-n-s-k-i, she is a senior director  
4 for project transactions for TPS; is that  
5 correct?

6 A She is, and, congratulations, I think  
7 you're probably one of the only people who's  
8 ever been able to pronounce her name, the  
9 first --

10 Q I can tell you, if I did it correct,  
11 it's by mistake. It's definitely not based on  
12 any knowledge I have. Is she the second in  
13 command of TPS?

14 A Second in command? I'm not sure what  
15 you mean by that.

16 Q Sure. I'm going to pull up a document  
17 that I will mark as Exhibit Number 40. This is  
18 something that I pulled off from your website.  
19 It shows a list of employees and also a list of  
20 experts on the -- going down under Experts, it  
21 lists you first and then Jennifer Guthrie  
22 Purczynski. And I didn't know if that was just  
23 in order of seniority of the company or who's  
24 over it, but she's listed as second.

25 A Yeah, you know, it's -- it doesn't have

1 any particular meaning in terms of -- and your  
2 question was second in authority?

3 Q Uh-huh.

4 A So, no, I think she's -- she's one of  
5 the experts that works for the company. She  
6 certainly has a long history in renewables.

7 Q Sure. Jennifer used to work for Enel  
8 Green; is that correct?

9 A She did, yes.

10 Q Okay. She started working for TPS in  
11 2018?

12 A 2018? I thought it was -- well, I  
13 thought it was before that, but -- yeah, I  
14 thought it was before that, actually, but it  
15 could be 2018.

16 Q Sure. Let me pull up another exhibit.  
17 I will look at that later. Has Jennifer -- do  
18 you know if Jennifer has spoken with anyone from  
19 Enel Green about the Osage Wind project?

20 A She has not.

21 Q Okay. I'm going to pull up your expert  
22 report, and, in particular, I'm going to look at  
23 the page starting with your CV, and that's going  
24 to be page -- what is that number, page number?

25 (Discussion off the record)

1           Q    (By Mr. Ashworth)  As that's being  
2   pulled up, when did you graduate from University  
3   of Redlands?

4           A    2003 -- 2002, 2003, something like that.

5           Q    When did you obtain your paralegal  
6   certificate from University of San Diego?

7           A    Oh, I want to say, hmm, like, 1990,  
8   something like that.

9           Q    In your work history, you listed that  
10   you worked for Jennings, Englestrand [sic]  
11   Henrikson as a single -- I'm sorry -- senior  
12   paralegal from 1989 to 1983 [sic]; is that  
13   correct?

14          A    Yeah, 1993, I think you meant to say;  
15   right?  Yeah.

16          Q    Sorry.  Did you work in real estate or  
17   title before that?

18          A    I did.  Many years ago I worked for a  
19   firm that did foreclosures, and I also worked  
20   for a law firm in San Jose, California, prior to  
21   1989 when I moved to San Diego.

22          Q    And you would consider that to be work  
23   -- an experience in real estate and title?

24          A    Yes, I would.  Corporate with a  
25   generalist attorney, so we did a lot of

1 different things in kind of the general business  
2 area in real estate and title.

3 Q Okay. Going on the same page, a little  
4 bit up, earlier you testified about your work  
5 with -- or relative to a BIA lease negotiation,  
6 I think you had talked about. Do you recall  
7 that?

8 A Yes.

9 Q And you had indicated that, ultimately,  
10 the project fell through, but you didn't get  
11 past the negotiation phase; is that correct?

12 A Correct. The project was stopped, yes,  
13 so we didn't continue --

14 Q I believe you indicated that it was  
15 going to be in the northwest.

16 A Yeah, somewhere in the midwest, I think,  
17 is probably more likely, in the midwest, not  
18 really --

19 Q Do you know when that would have --  
20 sorry. Sorry to interrupt. Go ahead.

21 A Yeah, I'm sorry. I was just saying more  
22 in the midwest, not in the northwest.

23 Q Okay. Approximately what year would  
24 that have been in?

25 A I think I said it was in 2013, something

1 along those lines, 2013, maybe 2014.

2 Q Okay. And do you know what tribe was  
3 involved?

4 A I do not recall the tribe. I do not.

5 Q Okay. Do you know what company was  
6 involved, wind developer that was involved?

7 A I do not.

8 Q Were you retained by the wind developer  
9 or the tribe?

10 A We were actually retained as a  
11 subcontractor to the person -- to the primary  
12 company that was doing the project work, so they  
13 retained us as an expert on the real estate and  
14 title negotiations, because that's not something  
15 that their firm does. So they brought us in to  
16 help them specifically in that area.

17 Q Okay. You were brought in -- you were  
18 brought in to do the title and -- title  
19 negotiations and the real estate -- I'm sorry --  
20 negotiations? Did I read that right -- did I  
21 hear that right?

22 A Well, in this particular case, we were  
23 doing the lease negotiations --

24 Q Okay.

25 A -- in this case for the site control.

1           Q    How do you nego- -- okay. I take that  
2 back.

3                   Who would the lease have been from?

4                   Would that have been from the tribe or from BIA?

5           A    Well, the lease was going to be with the  
6 tribe, but subject to the approval of BIA,  
7 because I understand that all the leases have to  
8 -- any -- any long-term leases that are entered  
9 into of this kind have to be approved or subject  
10 to approval of the BIA.

11           Q    When you say, any leases of this kind,  
12 what kind of leases are you referring to?

13           A    Site control leases, so -- which are  
14 typically longer-term leases. So they would be  
15 subject to the approval of the BIA.

16           Q    Okay. So site control leases, we're  
17 talking about surface leases; is that right?

18           A    Correct, surface leases.

19           Q    Okay. Do you know if -- were mineral  
20 leases -- I'm sorry. Was the mineral estate  
21 severed in that instance?

22           A    No, no. The tribe controlled the  
23 mineral estate and the surface.

24           Q    Okay. So the lease -- any negotiation  
25 of the lease, had it actually gone through, it

1       **would have been for that section of the property**  
2       **for the tribe in its entirety?**

3           A    Correct, for the surface, yes.

4           Q    **You previously indicated earlier in the**  
5       **deposition that you're not an expert as to the**  
6       **valuation of mineral resources; is that correct?**

7           A    Correct. I don't typically value  
8       mineral estates as part of my work, that's  
9       correct.

10          Q    **Okay. And even if you do, you don't**  
11       **consider yourself to be an expert in that area?**

12          A    I mean, I think if we're talking about  
13       the value of a mineral estate, normally, I would  
14       leave that to someone who is an expert in that  
15       area, specifically of the value of the minerals,  
16       per se.

17           So if I'm thinking about the value --  
18       and I think I talked about the fact of different  
19       parameters in a project, so understanding -- if  
20       that's a question as part of the negotiations,  
21       what is the -- what is the extent of the mineral  
22       estate, you know, what is the makeup of the  
23       mineral estate, what could be the potential  
24       value of the mineral estate, then I'm not -- I'm  
25       not an expert in trying to value a mineral

1 estate or determine -- you know, taking a look  
2 at, you know, geology and making a determination  
3 on what is the composite minerals and all  
4 that. So I don't try to opine on that. I'm not  
5 a min- -- I'm not an expert in that area.

6 **Q Sure. Do you hold yourself out to be an  
7 expert in regards to the calculation of damages  
8 in relations to when Indian minerals are taken  
9 without permission?**

10 MS. STEVENSON: Object to form.

11 THE WITNESS: I don't, because it hasn't  
12 really come up. It hasn't come up. I mean,  
13 that's -- that's not something that comes up in  
14 our business, so I wouldn't hold myself out as a  
15 -- as an expert in that.

16 **Q (By Mr. Ashworth) Sure. Would you hold  
17 yourself out as being an expert in regards to  
18 calculation of damages in general that involves  
19 the taking of mineral resources without  
20 permission?**

21 MS. STEVENSON: Object to form.

22 THE WITNESS: I think that's a very  
23 unique aspect that is the subject of this case,  
24 so it -- you know, damages doesn't come up, per  
25 se. It doesn't come up in the negotiations. I

1 think I mentioned the types of agreements that  
2 I'm accustomed to negotiating, surface use  
3 agreements and other accommodation agreements,  
4 but in terms of damages, that's not normally  
5 something that I'm going to try to opine on, per  
6 se.

7 I think what I look at is -- and what I  
8 did here is to look at what's customary in terms  
9 of compensation. And so I think that's -- and  
10 maybe that's a real finer point, but that's  
11 really what I looked at is, what is compensation  
12 in the ordinary course of these negotiations.  
13 And I think that's what we're looking at here,  
14 what would have been a negotiation for a -- for  
15 a mineral lease.

16 And that's what I'm accustomed to  
17 negotiating is that kind of compensation, or  
18 maybe it's a matter of semantics, but I don't  
19 think of it in terms of damages.

20 Q (By Mr. Ashworth) Sure. And I'll get  
21 to compensation as a separate issue, because I  
22 think compensation is before the taking, at  
23 least in my opinion. Damages is in regards to  
24 the taking without permission.

25 So it's my understanding, just from your

1 long answer, was that you are not -- you don't  
2 consider yourself to be an expert in regards to  
3 the calculation of damages as to when minerals  
4 are taken without permission?

5 MS. STEVENSON: Object to form.

6 Q (By Mr. Ashworth) Is that -- is that  
7 correct?

8 MS. STEVENSON: Object to form.

9 THE WITNESS: Correct.

10 Q (By Mr. Ashworth) Okay. I'm trying to  
11 understand, what is it that you were retained to  
12 do as an expert in this case. I'm going to  
13 refer you to your expert report. In particular,  
14 I'd like to look at Page 5. Actually, we'll  
15 start with Page 4, the very bottom of your  
16 expert report. Right there.

17 Here at the bottom, at this bottom  
18 paragraph, it says that you have been asked to  
19 provide expert opinions in responses to two  
20 questions. The first one is whether a  
21 knowledgeable and experienced wind developer  
22 would have reasonably anticipated that a lease  
23 from a mineral owner would be required prior to  
24 construction of the project. That's the first  
25 part that you were required to give expert

1       opinion on.

2               The second is, if a wind energy  
3       developer was clearly apprised, prior to  
4       construction commencing, that a mineral lease  
5       was required to engage in ordinary turbine  
6       foundation excavation for a wind project, would  
7       the developer have practical and effective  
8       alternatives to using minerals so mined, end  
9       quote, from the mineral estate in the  
10      construction of the foundation for the project.

11               Those are -- is this the two areas that  
12       you were retained to give expert testimony on;  
13       is that correct?

14               MS. STEVENSON: Object to form.

15               THE WITNESS: We were asked to answer  
16       these two questions, together with looking at  
17       the FTI report.

18               Q        (By Mr. Ashworth) Okay. Well, I'm just  
19       trying to see. It states in your report -- it  
20       only says that these are the two areas that  
21       you're giving expert opinions as to, and your --  
22       it's your testimony that you're also giving  
23       expert opinions as to the FTI report; is that  
24       correct?

25               A        Say that again. I'm sorry.

1 Q Sure. I'm trying to understand what,  
2 exactly, you've been retained to give expert  
3 opinions as to. Your report only indicates that  
4 there's two areas that you're giving expert  
5 opinions as to, but it seems to me that it's  
6 your testimony today that you're also giving an  
7 expert opinion as to the FTI report.

8 MS. STEVENSON: Object to form.

9                   THE WITNESS: I think that's -- I think  
10   we're -- we're responding to the FTI report, and  
11   we're also answering these two questions.

12 Q (By Mr. Ashworth) Sure. Are you  
13 responding to the FTI report in a capacity as an  
14 expert, or are you just making comments as to  
15 it?

16 MS. STEVENSON: Object to form.

17 THE WITNESS: I'm responding to the  
18 report as an expert.

19 Q (By Mr. Ashworth) Okay.

20 (Discussion off the record)

21 Q (By Mr. Ashworth) And I say that  
22 because here in the last sentence --

23 (Discussion off the record)

24 Q (By Mr. Ashworth) The  
25 second-to-last-sentence of this page, it says,

1        "I have been asked to comment specifically on  
2        the contents of the FTI report with regard to  
3        the reasonable standards and customs within the  
4        wind industry -- wind development industry."

5                You know, I mention this because it says  
6        you were asked to specifically comment versus to  
7        give expert opinions. And that's why I wanted  
8        to, you know -- I guess there's some confusion  
9        on me, because it seems like now you're going to  
10       give expert opinions as to the FTI report.

11                MS. STEVENSON: Object to form.

12                Q        (By Mr. Ashworth) So my question is,  
13        you're giving more than just comments --  
14        correct? -- as to FTI's report?

15                A        Yes.

16                Q        Okay. And it's my understanding that  
17        your criticism of the FTI report is that the  
18        calculation of damages by Mr. Hazel is  
19        unreasonable; is that correct?

20                A        On the basis of using the payments in  
21        the wind energy lease, yes.

22                Q        Okay. And in fact -- scratch that.

23                And it's my understanding that you  
24        aren't able to say what reasonable damages would  
25        be in this case; is that correct?

1 A I -- I'm not sure what you mean by that.

2 Q Sure. It's your opinion, when we go to  
3 trial -- scratch that.

4 When we go to trial, it's going to be  
5 your testimony to the court that based on your  
6 expert opinions and your expert background that  
7 the measure of damages or the calculation of  
8 damages by Mr. Hazel is unreasonable; correct?

9 A Correct.

10 Q And that it's also going to be your  
11 expert opinion to the court that, when asked,  
12 what are the reasonable calculation of damages,  
13 your response would be, I don't know; is that  
14 correct?

15 MS. STEVENSON: Object to form.

16 THE WITNESS: Well, I think what I said  
17 is that I am -- I'm -- maybe it's a matter of  
18 disagreement over what "damages" means and  
19 "compensation." So I am disagreeing with the  
20 formula that is used in the FTI report for  
21 calculating the compensation. When I -- when I  
22 think of damages, I'm thinking of damages to the  
23 surface. Perhaps I'm thinking of it differently  
24 than you are. What I'm -- what I'm disagreeing  
25 with is the calculation and the fact that the

1       entirety of the wind agreement, including all  
2       the compensation, operating fees, and what have  
3       you, are used in the basis of that calculation  
4       for the compensation.

5                   So I guess maybe we don't agree on what  
6       constitutes damages, because, you know -- and,  
7       again, I'm not an attorney, so maybe I'm --  
8       maybe I'm misunderstanding. But I'm -- that is  
9       what I disagree with is the compensa- -- the way  
10      that the compensation is being calculated.

11           **Q       (By Mr. Ashworth) Okay. Well, let's --**

12           **A       You know. Anyway...**

13           **Q       Well, how do you believe it should be**  
14       **calculated?**

15           **A       I should -- I believe it should be**  
16       **calculated on the basis of any other permit or**  
17       **any other agreement that would customarily be**  
18       **granted for this type of activity in Osage**  
19       **County. I think we looked at that and we said**  
20       **there's a lot of other comparable documentation**  
21       **out there to support that. I don't believe that**  
22       **there's documentation in Osage County that**  
23       **supports using all the different payments under**  
24       **the wind lease as the basis for the**  
25       **compensation. That's what I'm -- that's,**

1 fundamentally, what I am disagreeing with in the  
2 FTI report.

3 Q Okay. Earlier you testified that you  
4 read part of the Tenth Circuit court opinion in  
5 this case, so I assume you haven't read the part  
6 where the defendants have been found liable in  
7 this case, and the trial's really going to be on  
8 damages. And that's, you know, what the court's  
9 going to order to compensate the defendants for  
10 what was done. Whether that is to have the  
11 towers removed or what, my -- I'm trying to  
12 understand, are you the expert for the  
13 defendants to tell the court how much should be  
14 paid or what should be done to, I guess, remedy  
15 or compensate for the minerals that were taken?  
16 Is that going to be you?

17 MS. STEVENSON: Object to form.

18 THE WITNESS: I -- I think you have  
19 several other experts that are speaking  
20 specifically to the value. I think you have Mr.  
21 Pfahl, who spoke specifically to the value and  
22 the comparable nature of the damages in Osage  
23 County. I think my role is to talk about what's  
24 customary and typical in the renewable energy  
25 industry, and that's what I'm speaking to. I'm

1 speaking on the basis of all my experience  
2 negotiating many different kinds of crossing  
3 agreements and permitting -- permits and that  
4 type of thing for title in many other  
5 jurisdictions and what happens.

6 And that's the basis for my -- so when  
7 we -- when you go back and look at all those  
8 different projects, is the compensation based on  
9 the wind energy leases and all the different  
10 payments that are set forth in the wind energy  
11 lease. And I'm here to testify that that's not  
12 the case.

13 Now, there's other people that are, by  
14 far, the experts on trying to, you know, opine  
15 an all the specific damages. But what I'm here  
16 to talk about is the nature of that calculation  
17 and what is customary on the basis of my many  
18 years of experience.

19 **Q (By Mr. Ashworth) I have so many  
20 questions, follow-up questions because of that  
21 answer. I'm trying to think of where to start.**

22 **My question to start would be, if you  
23 believe that, you know, you're going to be the  
24 expert at trial to say what is customary in the  
25 industry to compensate a mineral rights --**

1 mineral estate owner for when a mineral lease  
2 was not taken -- sorry, was not negotiated and  
3 obtained and the minerals were taken -- it's  
4 your testimony to the court -- so that was a  
5 long, rambling question. Let me start over  
6 again. Sorry about that.

7 Is it going to be your testimony to the  
8 court that, as an expert with experience within  
9 the industry, that you're going to opine as to  
10 what compensation is reasonable for when  
11 minerals are taken without permission relative  
12 to a wind energy development project; is that  
13 correct?

14 MS. STEVENSON: Object to form.

15 THE WITNESS: I think I'll be testifying  
16 -- if there is a trial, then I will be  
17 testifying on the basis of what's set forth in  
18 that Tenth Circuit opinion that said that the  
19 crushing of the minerals and that kind of thing  
20 constituted mining. So I will be testifying on  
21 that -- on that basis, on the basis of my  
22 industry experience working with mineral  
23 negotiations. So that will be the basis of my  
24 testimony.

25 Q (By Mr. Ashworth) Sure.

1                   MR. ASHWORTH: And I would object to  
2 that as nonresponsive and move to strike.

3                   Q     (By Mr. Ashworth) Let me reask that  
4 question.

5                   I'm trying to understand -- this is my  
6 -- this probably will be my only time to speak  
7 with you before trial, and I don't want to get  
8 to trial and, all of a sudden, you tell the  
9 court you've come up with a calculation that was  
10 never previously disclosed to us.

11                  But what I want to know is, is what  
12 calculation -- based on your experience within  
13 the industry, how, you know, you would  
14 compensate minerals being taken from a mineral  
15 estate owner without permission? How would you  
16 calculate that?

17                  MS. STEVENSON: Object to form.

18                  THE WITNESS: I think in this case, you  
19 know, if you're going to establish that  
20 compensation, then you're going to have to look  
21 at the other documents, as I said, in the county  
22 that have already been used, the other permits.  
23 So you're going to pay some kind of a nominal  
24 amount. You're going to pay something -- I  
25 think someone did some calculations, perhaps on

1 the amount of the limestone that was actually  
2 manipulated for purposes of a foundation, so I  
3 think they know that amount.

4 So I think you would be looking at that.

5 You would be looking at something based on what  
6 a typical, you know, permit or a lease would  
7 ordinarily be negotiated on for this three-month  
8 period of time that the construction was  
9 conducted.

10 Q (By Mr. Ashworth) Okay. And you base  
11 **that opinion based on your industry expert --**  
12 **experience?**

13 A Based upon my industry experience, yes.  
14 If you go into a certain jurisdiction and you  
15 are negotiating documents, permits, crossing  
16 agreements, or whatever, then they are typically  
17 negotiated based upon what's customary in that  
18 state and county.

19 Q Okay. Now we're -- you're talking about  
20 negotiations. I want to know about this  
21 particular instance when minerals were taken  
22 without permission, and it seems to me that  
23 you're coming up with that opinion based on your  
24 industry experience.

25 My question would be, it's my

1 understanding that you have never been involved  
2 in a wind development project where a minerals  
3 lease was required and not obtained; is that  
4 correct?

5 MS. STEVENSON: Object to form.

6 THE WITNESS: Where there was mining  
7 involved? If you're talking about mining, I've  
8 worked on many, many lease negotiations.

9 Q (By Mr. Ashworth) Sure.

10 A With tribes and other types. But you're  
11 talking about this particular case, where  
12 there's an allegation around minerals being  
13 mined. I've not negotiated that kind of lease  
14 before, no.

15 Q Sure. And I think we can decide whether  
16 we agree, whether the word "mined" or "mineral  
17 development" should be used. But you've not had  
18 any experience where a mineral lease was  
19 required prior to beginning a wind development  
20 project; correct?

21 A Typically, no, no, because there's not  
22 going to be -- there's no mining that takes  
23 place. So, normally, a mineral lease is not  
24 going to come up, because you're not --

25 Q Okay.

1           A -- leasing the -- for -- you're not  
2 going to be mining, so you're not going to  
3 lease.

4           Q    **Sure. And that just makes it a little**  
5 **bit more confusing for me as to -- it's your**  
6 **testimony that you have never been involved in a**  
7 **situation where a mineral lease was required,**  
8 **yet you believe that, based on your experience**  
9 **in the industry, you're going to tell the court**  
10 **how compensation should be paid when a mineral**  
11 **lease was not obtained.**

12          A    Well, I think we know that, even in the  
13 FTI report, there's no basis for the calculation  
14 of using the wind lease as the basis for the  
15 compensation. I sat in on the deposition for  
16 Mr. Hazel, and he's never worked on a single  
17 project where that compensation was ever used or  
18 ever at issue.

19           So this is a very unique case here  
20 that's come up. I've been involved in plenty of  
21 negotiations, but not in a particular fact  
22 scenario that we're talking about here, where  
23 there's an allegation of mining as a result of  
24 construction and rocks being crushed and all of  
25 that. That is a very unique case.

1                   So I think, you know, there's not a  
2 precedent for that, that I'm aware of. And with  
3 Mr. Hazel's experience, who I think he has close  
4 to the amount of years of experience that I do  
5 in his work, which is many years, and he has no  
6 comp for that either. So, you know, I think  
7 across the board, as far as the experts, we both  
8 agree that there's no precedent for the  
9 calculation of these -- of this compensation.

10                  **Q     Sure. Your -- but when it comes to**  
11 **trial, you're going to be basing your testimony**  
12 **based off of your industry experience, when**  
13 **you've already said that there is no experience**  
14 **relative to the facts of this case; correct?**

15                  A     I will be basing it on all the  
16 experience that I have negotiating many, many,  
17 many agreements. But, you know, this is -- this  
18 is definitely a different case with the facts  
19 here, but people -- people ask me -- excuse me  
20 for interrupting, but, you know, Stuart, people  
21 ask me, have you worked in all 50 states? Okay?  
22 I haven't worked in all 50 states yet. I've  
23 worked in over 40 states, but I haven't worked  
24 in all 50 states.

25                  But I can tell you this. There is best

1 practices. There's ways that you work, and  
2 there's best practices, and those apply across  
3 the board. So, you know -- you know, I haven't  
4 worked in all 50 states, but it doesn't mean  
5 that the information is not correct or accurate  
6 as to the industry experience.

7 **Q Would you consider yourself to be an  
8 expert as to the best practices that a renewable  
9 energy developer should follow?**

10 A As it relates to real estate and title  
11 and my particular area of expertise, yes.

12 Q Would you -- in your experience as it  
13 relates to real estate and title, would you  
14 agree that one of the best practices to mitigate  
15 risks by a renewable energy developer would be  
16 to conduct comprehensive due diligence? Would  
17 you agree with that?

18 A Yes, yes.

19 Q Okay. And part of the due diligence,  
20 that would mean that a developer should try to  
21 discover any potential risks and evaluate their  
22 impacts to determine whether potential projects  
23 would be a good investment for them; is that  
24 correct?

25 A Yes.

1           Q    Would you agree that part of due  
2    diligence involves a review of permitting and  
3    jurisdictional issues to determine site  
4    feasibility? Would you agree with that?

5           A    Yes.

6           Q    Okay. Would you agree that, as part of  
7    due diligence, involves compliance review to  
8    ensure that a potential project adheres to  
9    applicable regulations?

10          A    Well, on the regulations part, I'm not  
11    too sure about that. I'm not an attorney. But  
12    certainly within my area of expertise, yes, I  
13    think you want to make sure that you do all the  
14    -- all the due diligence that you can. Comes to  
15    the compliance part, that's up to the attorneys  
16    to take a look at everything and ensure that  
17    it's in compliance.

18          Q    Okay. Would it -- would you agree that  
19    due diligence would require compliance review?

20          A    I don't understand the question. I'm  
21    sorry.

22          Q    Sure. We're talking about due  
23    diligence.

24          A    Okay.

25          Q    Would you agree that one of the steps of

1       **doing due diligence would be to have a**  
2       **compliance review to ensure that there are any**  
3       **-- to see if there are any potential regulations**  
4       **or -- I'm sorry -- applicable regulations that**  
5       **need to be adhered to?**

6           A    It typically happens in the projects,  
7       yes.

8           Q    **Okay. And that would be part of due**  
9       **diligence; correct?**

10          A    Yes, could be, yes. Probably is part of  
11       it, yes.

12          Q    **So in doing due diligence, that could be**  
13       **a step, or you don't know?**

14          A    Yes, it's probably one of the steps that  
15       happens. Could be, yes.

16          Q    **Okay. And you would consider yourself**  
17       **to be an expert in terms of best practices for**  
18       **due diligence as it relates to real estate and**  
19       **title; is that right?**

20          A    Yes.

21          Q    **Okay. Do you know if Enel Green did any**  
22       **type of due diligence work before starting**  
23       **construction on the subject project?**

24          A    You know, I -- no, I'm not sure what  
25       took place. I didn't work on this project, so I

1 don't know.

2 Q But that's something that you would have  
3 expected Enel Green to have done before  
4 beginning construction?

5 A Yes.

6 Q Okay. Does TPS perform due diligence on  
7 behalf of its clients (inaudible)?

8 THE REPORTER: What was the last part?

9 Q (By Mr. Ashworth) Does TPS do due  
10 diligence for its clients if it's been retained  
11 to do so?

12 A We do, yes.

13 Q Okay.

14 A We do.

15 Q And maybe to rephrase it this way, that  
16 would -- doing due diligence for clients would  
17 be one of the services offered by TPS?

18 A Right, for real estate and title, for  
19 our particular -- there's a lot of different  
20 pieces associated with projects, so, you know,  
21 we're very specific to real estate and title,  
22 but yes.

23 Q Okay. And if TPS had been retained by  
24 Enel Green to provide risk management consulting  
25 services relative to the subject project, that's

1 something that due diligence -- I'm sorry --  
2 would have been one of the things that TPS would  
3 have -- let me restart that. That was a  
4 terrible question. I was thinking I could save  
5 it.

6 If TPS was retained by Enel Green to  
7 provide risk management services to -- or  
8 relative to the subject project, is it your  
9 belief that TPS would have advised Enel Green to  
10 follow the best practices in the industry to  
11 mitigate any potential risks associated with  
12 renewable energy projects?

13 MS. STEVENSON: Object to form.

14 THE WITNESS: Yes, I'm sure we would  
15 have done that, right. We have a protocol so...

16 Q (By Mr. Ashworth) Okay. Based on what  
17 we know now on the Tenth Circuit opinion, do you  
18 believe that Enel Green performed adequate due  
19 diligence before beginning construction on the  
20 subject project?

21 MS. STEVENSON: Object to form.

22 THE WITNESS: I think they did, based  
23 upon what they knew at the time, yes.

24 Q (By Mr. Ashworth) Okay. And so based  
25 on what they knew at the time, you believe that

1       **they performed due diligence adequately;**  
2       **correct?**

3           A     Yes.

4           Q     **What about -- is that a "yes"?**

5           A     Yes.

6           Q     **Okay. What about based on what we know**  
7       **now?**

8                   MS. STEVENSON: Object --

9           Q     **(By Mr. Ashworth) Do you believe that**  
10       **Enel Green would have performed adequate -- or**  
11       **did perform adequate due diligence before they**  
12       **began construction on the subject project?**

13                   MS. STEVENSON: Object to form.

14                   THE WITNESS: You know, I'm trying to  
15       comment on something I really don't know  
16       anything about. I -- I can't really comment on  
17       the totality of their due diligence. You know,  
18       we have information about a very specific area.  
19       There are very specific questions around this --  
20       the tribal rights so --

21           Q     **(By Mr. Ashworth) Okay.**

22           A     -- you know, it wouldn't be correct of  
23       me to try to comment on the totality of the due  
24       diligence, because I really don't know. I  
25       wasn't there. I don't know about that.

1           Q    Sure.  So you think it's inappropriate  
2    for you to comment as to whether Enel Green did  
3    proper due diligence, based on what we know now,  
4    but you have no problems about opining that,  
5    based on what was known at the time?

6           MS. STEVENSON:  Object to form.

7           Q    (By Mr. Ashworth)  Is that correct?

8           MS. STEVENSON:  Object to form.

9           THE WITNESS:  I'm sorry.  Could you  
10   repeat the question?  It's kind of a little --

11          Q    (By Mr. Ashworth)  Sure, sure.  It seems  
12   like you -- it's your opinion that Enel Green  
13   did adequate due diligence based on the  
14   information that they knew at the time; that was  
15   your opinion.  And when I asked based on what we  
16   know now, do you believe that Enel Green  
17   performed adequate due diligence relative to the  
18   subject project, and then you said, well,  
19   actually, you don't -- you're not able to  
20   comment?

21          A    Correct.

22          Q    All right.  What makes you able to  
23   comment as to what you believe Enel Green knew  
24   at the time versus what we actually know now?

25          A    I think it's a great question, and I

1 think that I should correct what I said  
2 previously and say that all I can really speak  
3 to is this particular question. And, you know,  
4 it's hard to -- I didn't look at any title work.  
5 You know, I don't know about the totality and  
6 all the history of this. All I know is where we  
7 are now and what we have in terms of the finding  
8 and that we now know there should have been a  
9 lease.

10 Q **Okay.**

11 A So, you know, I -- I mean, I work on a  
12 lot of projects, and when you're done with a  
13 project and debrief the project, you're a lot  
14 smarter and -- you know, across the board. You  
15 probably go back, and perhaps you might do some  
16 things differently. So I should qualify my  
17 comment by saying that.

18 Q **Okay. Do you believe that Enel Green's  
19 review of permitting and jurisdiction issues  
20 prior to construction was sufficient enough for  
21 purposes of due diligence?**

22 MS. STEVENSON: Object to form.

23 THE WITNESS: Yeah, I'm not going to  
24 comment on the totality of the permitting,  
25 because I -- I wasn't -- you know, I wasn't

1 involved in that, so -- so I can't comment on  
2 that.

3 Q (By Mr. Ashworth) I'm sorry. You're  
4 not able to comment as to the totality of  
5 permitting?

6 A Right, because -- could you ask --  
7 because you asked about the permitting and all  
8 that; right? So you're asking about all the  
9 different permits?

10 Q Sure. About the permits, yeah. Even to  
11 rephrase that, do you believe that Enel Green's  
12 review of licensing, leasing, permitting, and  
13 jurisdictional issues prior to the construction  
14 of the project was sufficient enough for  
15 purposes of due diligence?

16 MS. STEVENSON: Object to form.

17 THE WITNESS: Yeah, that -- that's way  
18 too broad. I have -- that's a huge -- you know,  
19 it could be hundreds of documents. I have no  
20 idea. You know, I --

21 Q (By Mr. Ashworth) Okay. Well, let me  
22 make the question a bit less broad, and maybe  
23 you'll be able to answer it. Do you believe  
24 that Enel Green's review of regulations prior to  
25 construction was sufficient enough for the

1      **purposes of due diligence?**

2                    MS. STEVENSON: Object to form.

3                    THE WITNESS: Yeah, I don't -- I think  
4                    -- I wasn't really asked to comment on that. I  
5                    mean, I think as far as trying to understand all  
6                    the different -- all the different questions and  
7                    all of that when, you know, you're talking about  
8                    what happened back, I think -- what? -- in,  
9                    like, 2012, you know, I don't know. I don't  
10                   know what Enel would have done back then. I  
11                   don't know, or 2013. I don't know.

12                  Q      (By Mr. Ashworth) Okay. Well, ma'am,  
13                  **were you not retained to opine and give an**  
14                  **expert opinion as to whether a wind developer**  
15                  **would have reasonably anticipated whether a**  
16                  **lease from a mineral owner would have been**  
17                  **required prior to construction?**

18                  A      I think that's what we're talking about,  
19                  right. If you're talking about that, yes, yes.

20                  Q      Okay. And if a regulation required that  
21                  a wind developer get a lease, would it be your  
22                  opinion that Enel Green did not undertake  
23                  sufficient due diligence to determine whether  
24                  that was a requirement?

25                  MS. STEVENSON: Object to form.

1                   THE WITNESS: I don't agree with that in  
2 this case, because there wasn't clarity around  
3 the -- around the requirements. There wasn't a  
4 clear understanding of what those requirements  
5 even were. There was discussion around permits,  
6 and there was discussion around leases. I mean,  
7 it seems to me not even the agency itself, even  
8 when they sent the notification about the --  
9 that one letter that we looked at previously, it  
10 talks about a permit.

11                  So I don't -- I don't think that there  
12 was clarity around even what needed to be asked  
13 for. So I can't say that the proper due  
14 diligence wasn't done, because I -- it doesn't  
15 appear that there was even clarity on the part  
16 of the agencies and the particular groups that  
17 were involved on what was needed.

18                  So I'm not sure how you -- you know, do  
19 due diligence around that. I think you -- you  
20 know -- you know, a case of specific due  
21 diligence, if you're looking at a title report,  
22 or I talked about some of the other documents  
23 that we looked at, those are very specific. You  
24 can look at that and ascertain what their  
25 requirements are. I think you can due diligence

1 around that, but where you don't have clarity, I  
2 -- you know, I don't know what you can do around  
3 that.

4 Q (By Mr. Ashworth) Okay. Whose burden  
5 is it to -- you know, to set clarity?

6 MS. STEVENSON: Object to form.

7 THE WITNESS: I'm -- the court's, I  
8 think; right? I mean, if there --

9 Q (By Mr. Ashworth) Okay.

10 A -- you know, I mean, yeah, I'm not sure  
11 what you mean by that question. That's a really  
12 broad question, yeah.

13 Q Sure. You indicated that there was no  
14 clarity at the time as to whether a lease was  
15 required. My question would be, whose burden  
16 would it be to determine whether a lease, in  
17 fact, would have been required?

18 MS. STEVENSON: Object to form.

19 THE WITNESS: Well, what I think I said  
20 is that there's no part -- declaring on the part  
21 of the agency; right? I mean, you know, part --  
22 part of what we do -- and I mentioned this as  
23 part of our curative work, because, you know, we  
24 reach out to a particular agency, we say, we are  
25 proceeding with this project, here's all our

1 plans, here's all of our -- you know, here's  
2 everything that's going to happen. I understand  
3 that that happened, you know, early on, I  
4 believe; all that was presented.

5 So that's what I'm accustomed to. You  
6 would present all your material, you'd say  
7 here's what -- here's what we're going to do,  
8 here's what we need to do. And then at that  
9 point, you get a response back saying, okay,  
10 you're going to need, you know, a subordination,  
11 or in some cases we'll have a bank that will  
12 say, we're not going to give you a  
13 subordination, we're going to only give you a  
14 nondisturbance agreement. Okay. If that's what  
15 we're going to have to work with, that's what  
16 we'll work with.

17 So in my experience, it's the agency or  
18 the bank or whoever the entity is, they're the  
19 ones that come back and say, this is what is  
20 going to be required. So I think that's where  
21 my approach would be here, is you would be  
22 reliant upon the particular agency or group to  
23 come back to you and say, here's what we need.

24 Q (By Mr. Ashworth) Okay. And if an  
25 agency doesn't come back and say, you need a

1       **lease and you proceed anyways, is that -- is**  
2       **that the agency's fault?**

3           A    Well, I think -- I think in one of the  
4       earlier letters that I saw, the project is set,  
5       you know. We're not going to be doing any  
6       mining, we don't believe any kind of  
7       documentation is required, and I don't believe  
8       that there was a response to that.

9           So is it incumbent -- you know, being --  
10       you know, you can't guess; right? I mean, I can  
11       start trying to throw agreements at an agency.  
12       You know, how do I know, what do I know. What  
13       -- you know, you don't know what they're -- what  
14       they're going to want.

15       I mean, normally -- you know, I think  
16       there's possibly other projects that have been  
17       developed. I mean, certainly, there's enough  
18       mineral development. I think there's other  
19       limestone development that's happened in Osage  
20       County, and we know that it happened adjacent to  
21       the project.

22       So I would think that there would be a  
23       familiarity with the documentation; right? I  
24       mean, I looked at the sandy soil permit, so --  
25       and that -- there was one that was issued right

1 around this time frame, in 2014. So, obviously,  
2 there was familiarity with the kind of documents  
3 that would ordinarily be issued. There would be  
4 a permit, was what I saw.

5 And so you would -- you know, you would  
6 think that there would -- here's a -- you know,  
7 here you go. You know, you have to get a permit  
8 or what have you. But I think the other thing  
9 that's at issue here is the fact that it's --  
10 they didn't know that they were going to be  
11 crushing material until they got into the  
12 project, and then they started -- as they were  
13 working, that's when this question came up so...

14 Q Okay. Well, would it be your testimony  
15 that a reasonably prudent wind developer would  
16 proceed with a project when there's no clarity  
17 as to whether a mineral lease is required?

18 MS. STEVENSON: Object to form.

19 THE WITNESS: Because I think you're --  
20 you're -- you know, if you make a request, if  
21 you send all your documentation in and you don't  
22 get a response, and you say, we're not mining,  
23 and because I said you're -- you know, you're  
24 not going to be mining, that's -- you know,  
25 you're not going to be removing material, taking

1       it off site to sell it, then I don't think that  
2       you're going to pursue that. I don't think you  
3       see any need for it.

4           Q    (By Mr. Ashworth) Okay. So -- so in  
5       this instance, what we know is, is that the  
6       defendants were placed on notice that a lease  
7       was required, but it's your opinion that that  
8       notice would not have been sufficient enough to  
9       make them -- to apprise them that a lease was  
10      indeed required; is that right?

11           MS. STEVENSON: Object to form.

12           Q    (By Mr. Ashworth) Is that your  
13      testimony?

14           A    I'm not sure that we were put on notice  
15      that a lease was required. I'm not sure that we  
16      -- because if you look at the contents of the  
17      expectation of what the lease was going to be  
18      for, which the lease is for the mining, they  
19      didn't expect to be any mining.

20           Q    Is your testimony now that the  
21      defendants were never notified that a lease was  
22      required, that a mineral lease was required?

23           MS. STEVENSON: Object to form.

24           THE WITNESS: I think we saw the letter,  
25      and, again, I don't remember the exact date of

1       it, but I think we saw the letter that said that  
2       a -- some kind of a sandy soil permit may be  
3       required; right? And at that point, you're  
4       going to do some due diligence; right? You're  
5       going to be calling and saying, okay, what's  
6       going on, because, all of a sudden, we got this  
7       letter saying that you've been out inspecting or  
8       what have you, and you're saying that some kind  
9       of permit is required.

10           And I think you're going to be talking  
11       to them at that point, but I think the request  
12       at that point was some kind of permit.

13           **Q       (By Mr. Ashworth)** Okay. So I'll come  
14       back to this issue.

15           **Ma'am, do you know how many wind farms**  
16       **there are on Indian land or within Indian**  
17       **country?**

18           **A**      I have no idea, no.

19           **Q**      I can let you know that that's a number  
20       that's relatively small, and, I mean, I'm not  
21       going to tell you that I know it off the top of  
22       my head, because I don't, but I know that it's a  
23       question that we can find. What I do know is  
24       that it's small, but you -- it's your testimony  
25       that you've worked on at least some of those

1      **wind farm projects on Indian land or within**  
2      **Indian country?**

3            A      That's correct.

4            Q      **And how many of those would you have**  
5      **worked on?**

6            A      You know what? I don't remember. I  
7      can't tell you precisely. I'd have to go back  
8      and look at my records. A lot of what -- our  
9      work, too, is involved in early stages of  
10     projects, so prior site control where there may  
11     be some analysis and some review. So it's  
12     possible that we looked at sites, too, where --  
13     for the -- you know, like you said, there's not  
14     a lot of development.

15           There happens to be development out in  
16     -- on tribal land in San Diego right outside my  
17     back door, so I do know what's happened there.  
18     But, you know, it's -- you know, it's -- it's  
19     not something that happens a lot, per se. But I  
20     have no idea what the numbers are.

21           Q      **Okay. Can you give me an estimate of**  
22     **how many wind development projects that you**  
23     **worked on in relation to Indian land or Indian**  
24     **country? Is it maybe -- is it going to be more**  
25     **than ten or less than ten?**

1           A     You know, I don't know. We look at  
2 megawatts. You know, I consult on projects in  
3 all different jurisdictions, especially in -- on  
4 -- in the west. And so, you know, you're maybe  
5 talking Arizona, Nevada, New Mexico, California,  
6 as I said. So some of those projects go  
7 forward, some of them don't. Also, you know,  
8 Indian lands can be -- or tribal lands can also  
9 be the subject of other rights. You know, it  
10 can be access, it can be transmission.

11           We just started working on a project  
12 right now that's a solar project that involves  
13 solely tribal lands. So, you know, it -- I  
14 don't -- I don't necessarily keep track of all  
15 those numbers just because we -- you know, our  
16 work is, a lot of times, early stage, so it just  
17 depends. Some of it goes forward, some of it  
18 doesn't.

19           **Q     Okay. So it's your testimony that you**  
20 **are unable to say whether you have worked on**  
21 **wind development projects in relation to Indian**  
22 **land or Indian country, whether it's in excess**  
23 **of ten or less than ten; is that correct?**

24           MS. STEVENSON: Object to form.

25           THE WITNESS: I would say it's probably

1 more than ten, but I can't give you the -- ten  
2 projects. I -- you know, I'd have to go back  
3 and look at my records, because it would be over  
4 the course of many years.

5 Q (By Mr. Ashworth) Okay. And when would  
6 be the last time you would have worked on a wind  
7 development project in relation to Indian land  
8 or Indian country?

9 A A wind project. I would say probably in  
10 the last two or three years, we've worked on  
11 one. You're talking about wind; right? You're  
12 not talking --

13 Q That's right.

14 A -- solar? I would say in the last two  
15 or three years, possibly, yeah.

16 (Discussion off the record)

17 Q (By Mr. Ashworth) Ms. Centera, this is  
18 a -- well, it's a summary of projects for  
19 Kimberlee Centera. I have not reviewed this  
20 one, but I have reviewed the list of projects on  
21 your website, and I've gone through all of them,  
22 and I've not seen that any of them, based on  
23 location, were done on Indian reservations or  
24 Indian country. So maybe I missed something.

25 So I'd like to go over these with you,

1 and you let me know what I've missed, and let me  
2 know which ones that you believe of your list of  
3 projects -- and we're only looking at solar --  
4 would have been done on Indian land or within  
5 Indian country.

6 (Discussion off the record)

7 THE WITNESS: Can you please go back up  
8 for a second?

9 So some of these, I'm not necessarily --  
10 first of all, I'm not necessarily going to talk  
11 about all the tribal rights, if they exist,  
12 because in a lot of cases, they're going to  
13 exist as a matter of the severance of the  
14 estate.

15 So in some of these cases, it was a  
16 matter of what's evidenced on title, so it's not  
17 necessarily going to be shown on here. You  
18 know, I don't know if you really want to take  
19 the time to try to go through all these  
20 projects. I mean, I know there's projects, in  
21 particular, in Wyoming and that kind of thing,  
22 those wind projects.

23 Some of these projects in Kern County  
24 involve a severance of an estate, but, you know,  
25 some of the projects that are in Riverside

1 County involve tribal rights, but you get -- you  
2 know, you're not necessarily going to see it  
3 evidenced on here. If you it's going to be  
4 evidenced on the list, it's not necessarily  
5 going to be there.

6 This is only a very high level summary  
7 of the project, so it doesn't involve all of the  
8 in-depth work around the title where the tribal  
9 rights would be evidence.

10 Q Sure. And I'm not looking actually on  
11 what's listed under these projects, whether it  
12 says, "Indian reservation," "Indian country," or  
13 "Indian land." What I'm expressing to you is  
14 that I have went through these projects and  
15 Googled them to determine whether they were done  
16 on -- within Indian country.

17 And I didn't see any, so that's why I'm  
18 -- hopefully, this may refresh your memory by  
19 reviewing these as to whether a particular  
20 project was done on a reservation in Indian  
21 country or in Indian land.

22 And I think that, perhaps, the easiest  
23 way for you to do would be, since you do have a  
24 copy of your report, this is -- in front of you,  
25 if you can look at that yourself, if you can get

1       **someone else to scroll through or flip through**  
2       **those pages. And when you're done, let me know**  
3       **and we can see what you've identified. Okay?**

4           A    And I don't -- and, I'm sorry, you're  
5       saying that you Googled every single one of  
6       these projects in order to determine whether or  
7       not there's -- there's tribal rights?

8           **Q    From what -- yes, yes, from what I've --**  
9       **I've done and, you know, I don't get paid by the**  
10       **hour, but I did it. It's called due diligence.**

11          A    Right. And, again, you know, a lot of  
12       it is going to be on -- evidenced on title  
13       report. It may be reserved rights, it can even  
14       be buried in documents, you know. A lot of it  
15       is not going to necessarily be on tribal lands,  
16       per se. They may have some kind of interest.

17          You know, I think we did work in  
18       Riverside County on wind projects. We're  
19       working on a wind project right now, we're  
20       finishing up the survey work where I believe  
21       it's the Morongo tribe. And if you Google that,  
22       you'll see they do have an interest out in  
23       Riverside County. They have rights that  
24       overlay.

25          So I think, you know, part of our job is

1 to understand where those rights come from, and  
2 so you're not always going to be able to Google  
3 it and find the rights. If it was that easy to  
4 do it, honestly, I probably wouldn't have a  
5 business, because everybody could just Google it  
6 and find out the information.

7 But where it comes from, looking at the  
8 title documentation, it comes at looking at  
9 other evidence that's going to be of record. If  
10 you look at the records, you'll see out in  
11 Riverside county, there is -- I believe it's a  
12 tri-party agreement between the Indian tribe,  
13 the tribal lands, the -- maybe the BLM and the  
14 county of Riverside that have to do with the  
15 development of certain land that overlays a lot  
16 of the wind project.

17 And so these rights can be evidenced a  
18 lot of different ways, so I -- you know, I'm not  
19 sure about trying to take everyone's time and  
20 try to go through all these projects and telling  
21 you -- tell you all the ones that could have,  
22 you know, different Indian rights. But I can  
23 tell you on the Mountain View -- the Mountain  
24 View 1 and 2 project, which I'm not sure if it's  
25 on here, because it's one that's in the very

1 early stages. It's one that we're working on a  
2 repower for right now.

3 Q Okay. In regards to time, I mean,  
4 ma'am, this is going to be probably my only time  
5 to speak with you before trial, so I am willing  
6 to spend that time now. In regards to tribal  
7 rights, I'm not looking -- my question's not  
8 about tribal rights. It's about projects that's  
9 done on a reservation or within Indian country  
10 or has any -- you know, involves Indian property  
11 as it involves in this case.

12 You have previously testified that you  
13 had perhaps in excess of ten cases involving  
14 Indian land or Indian country, wind farms within  
15 Indian country. And so my question is, you  
16 know, let me know which ones they are.

17 So I will give you some time to look at  
18 your report and your project list to -- kind of  
19 to let me know if you can recognize any ones  
20 that you've done on a reservation, within Indian  
21 country, or on Indian land.

22 MS. STEVENSON: Object to form.

23 THE WITNESS: I would say we'd want to  
24 look at the Mountain View 4 project.

25 Q (By Mr. Ashworth) Okay.

1           A    This one right -- and if you could keep  
2    scrolling, please. I'm going off my  
3    recollection, too, so...

4           **Q    Sure.**

5           A    I think really in order to give you an  
6    accurate and complete list, I would have to go  
7    back through all my projects and take a look at  
8    all my material and try --

9           **Q    Well, I --**

10          A    -- and come up with a list for you.

11          **Q    Sure. Well, at least specifically for**  
12   **this list that you have on your CV that you**  
13   **attached to your report -- I guess you attached**  
14   **it to your report because you thought that was**  
15   **relevant to this case, so that's why I wanted to**  
16   **know, as to these cases, which ones.**

17          A    All the Foote Creek projects that are  
18   out in Wyoming also involved Indian rights. I  
19   mean, I think you said it yourself; there hasn't  
20   been a lot of projects developed on tribal  
21   lands. Also I would say that a lot of our work  
22   is very early stage, and some of it proceeds and  
23   some of it doesn't. I think there were also  
24   some tribal rights on the Jupiter tax equity.  
25   That's the NG, so --

1           Q    **When you say, "tribal rights," was it**  
2   **done on a reservation or Indian land or dealt**  
3   **with Indian property?**

4           A    There were some -- there were some  
5   tribal property that was involved. I don't  
6   believe any of the landowners are -- is tribal.  
7   And I believe there were some tribal rights on  
8   some of the Kern County projects, but I can't  
9   tell you specifically which ones of those. I'd  
10   have to go back and look at my records to be  
11   able to tell you exactly which ones.

12           Again, I would have to look at the  
13   Mountain View projects that are in Riverside  
14   County, because I believe that there was some  
15   tribal lands involved in those. It could have  
16   been on the transmission line. I don't remember  
17   specifically.

18           And I think we mentioned the Foote Creek  
19   projects so -- there may have been some Indian  
20   or -- pardon me -- tribal rights on the Lost  
21   Hills, but -- in Kern County, but I'd have to go  
22   back and look at that.

23           Q    **But that's solar, though; right?**

24           A    That's solar, correct.

25           Q    **And we're looking relative to wind**

1 projects.

2 A Can you go back up for a moment? I  
3 think on the Storm Lake, I'd need to go back and  
4 look at that. And could you scroll up, please?  
5 Yeah, I think just on the Storm Lake. Thank  
6 you. Yeah, some of -- some of the ALTA survey  
7 projects, I can't speak off the top of my head  
8 on those. We'd have to go back and look at the  
9 -- the title work on that.

10 Q Okay. So we finished scrolling through  
11 all of those pages. There were 22 pages there,  
12 and based on our review, you had questions about  
13 Storm Lake, Mountain View, and Fort [sic] Creek  
14 as possibly being projects that you have worked  
15 on that were wind development projects on Indian  
16 land, within Indian country; is that correct?

17 A I think I also mentioned the Foote Creek  
18 projects in Wyoming.

19 Q Yes, yes, I believe I mentioned that; is  
20 that correct?

21 A On -- on the basis of this review here  
22 at the moment, it sounds correct.

23 Q Yes. And we would later be able to  
24 consult with any reservation maps that defendant  
25 may determine that those were indeed Indian

1       **country projects. Would you -- yeah.**

2                   **Are there any other projects that you**  
3       **have done that are not on this list in relations**  
4       **to lease negotiations for wind projects?**

5       A    There could very well be. I've been  
6       doing this work for a very long time, so there  
7       could very well be.

8       Q    **As you sit here today, are you able to**  
9       **point to any project, wind development project**  
10       **where you were involved with the lease**  
11       **negotiation? Are you able to say -- or point to**  
12       **any project that's not listed?**

13       A    There -- actually, there's many projects  
14       that are not on this list that never got  
15       developed or could be under development right  
16       now. So they're not on this.

17       Q    **Okay.**

18       A    The primary ones that are on this list  
19       are the ones that have gone through a financing,  
20       so they're in the public domain. If they're not  
21       in the public domain, then I don't talk about my  
22       clients' project.

23       Q    **Sure. Would any of those not listed**  
24       **have involved tribal lands or Indian country?**

25       A    There's a certain amount of projects

1 that are in Arizona and New Mexico and Nevada  
2 that are -- are in various stages of  
3 development, and actually in Utah that are in  
4 various stages of development that may include  
5 some parts of tribal land. They may not  
6 necessarily be the -- you know, for the primary  
7 site, but they're for the transmission or that  
8 type of thing. So there may be some crossing  
9 through some tribal land.

10 Q I'm going to look at Page 5 of your  
11 expert report.

12 (Discussion off the record)

13 Q (By Mr. Ashworth) Right there. In the  
14 second paragraph, this first sentence starts  
15 with, "I have reviewed the six surface leases  
16 and the project background. Upon this review,  
17 it is clear that while the mineral interest is  
18 well established, there is no evidence to  
19 conclude that the project site would need to  
20 enter into a mineral lease."

21 Did I read that correctly?

22 A Yes.

23 Q The second sentence states, "Upon this  
24 review." When you say, "this review," I assume  
25 you're referring to the review of the materials

1 you cited in the sentence that immediately  
2 precedes; is that correct?

3           A    Correct. The six surface leases and the  
4 project background.

5 Q What do you mean by "project background"  
6 that you reviewed that caused you to believe  
7 that there is no evidence to conclude in your  
8 report that a mineral lease was needed?

9       A     I think the project background that we  
10      were looking at was the initial background  
11      that's set forth in the FTI report that talks  
12      about just a timeline for the development and  
13      what happened.  So if you're just looking at the  
14      face of -- on the face of the surface leases and  
15      the overarching project background, I think  
16      that's what we're talking about.

17 Q You say, "we're talking about." That's  
18 what you were -- is that you?

19 A That's what I'm --

20           Q    Or is there someone else?

21 A That's what I'm talking about.

22 Q Okay. When you wrote this, you had not  
23 been provided with the document, I believe it's  
24 -- Exhibit 36 is a letter from the BIA.

25 (Discussion off the record)

1 Q (By Mr. Ashworth) Give me one second.

2 My computer's...

3 (Discussion off the record)

4 Q (By Mr. Ashworth) Ma'am, have you seen  
5 this letter before?

6 A Can I see the top part of the letter?

7 Okay. Can you scroll down? I think I have seen  
8 this before.

9 Q You believe you have?

10 A I think I've seen this. Trying to  
11 think. Could you keep scrolling, please? Yes,  
12 I have seen this letter, yes.

13 Q Okay. If we go back to the first page,  
14 I'm going to look at the second paragraph right  
15 there. The last sentence, in particular, it  
16 says -- this is a letter from Andrew Yates, at  
17 the time, I believe, the chairman of OMC to  
18 David Boyce. That sentence says, "Activities  
19 occurring within or affecting the Osage mineral  
20 estate may be subject to a range of federal  
21 regulations" -- I'm sorry -- "regulatory  
22 requirements, including the need to secure a  
23 federal permit or lease to undertake such  
24 activities, pursuant to 25 CFR Sections 411 and  
25 414."

1                   You have read that sentence before;  
2 correct?

3                   A     Yes.

4                   Q     Okay. And before I get any further, I  
5 will mark this as Exhibit Number 41. I believe  
6 that's the correct number.

7                   Ma'am, did you read that sentence before  
8 you wrote your expert report, wherein you state  
9 that there was no evidence to conclude that  
10 project would have needed a minerals lease?

11                  A     No, I did not.

12                  Q     So you read this sentence after your  
13 expert report; correct?

14                  A     Right. I --

15                  Q     Okay. And this letter to David Boyce,  
16 who's -- my understanding is now or was the CEO  
17 of Osage Wind, LLC. And I'd also represent that  
18 it appears that when it references 411, 414, if  
19 you were to go to those sections, they don't  
20 exist. By looking at the titles, it would have  
21 indicated 211 and 214.

22                  Is it your understanding that this would  
23 at least provide some evidence that -- for Osage  
24 Wind to have concluded that a lease would have  
25 been needed, pursuant to either the -- or

1       **pursuant to the federal regulations?**

2                   MS. STEVENSON: Object to form.

3                   THE WITNESS: I think you'd have to look  
4                   at it in its entirety, because it says, to the  
5                   extent that the project requires a lease or a  
6                   permit. So I think this is -- it doesn't change  
7                   my opinion. I think it's informational.

8                   **Q       (By Mr. Ashworth) Okay.**

9                   A       It's -- to me it -- in my view, it's not  
10                  conclusive. It's saying if a lease is required,  
11                  so I --

12                  **Q       Okay.**

13                  A       -- don't believe that it's conclusive.

14                  **Q       Sure. You indicate in your report there**  
15                  **is no evidence to conclude that the project site**  
16                  **would have needed a mineral lease. You say**  
17                  **there's no evidence. Now, reviewing this, if**  
18                  **this is provided before the construction of the**  
19                  **project, you still believe that this does not**  
20                  **provide any evidence that the defendants should**  
21                  **have or should have at least looked into**  
22                  **obtaining a permit or lease?**

23                  MS. STEVENSON: Object to form.

24                  **Q       (By Mr. Ashworth) For the minerals?**

25                  A       Well, I think this letter is reciting

1 what we already know; right? I mean, I'm not --  
2 I'm not clear on the date of this letter, but I  
3 think it's -- the letter is saying that if a  
4 lease is required, that these are -- you know,  
5 you would -- I think what this is saying is  
6 you'd have to negotiate a lease on the ordinary  
7 terms and conditions. So --

8 Q Sure. And it would be -- you would like  
9 the court to believe that the defendants had no  
10 notice -- the defendants had no notice, prior to  
11 the construction of the project, the wind power,  
12 that a lease was needed?

13 MS. STEVENSON: Object to form.

14 THE WITNESS: Yeah, I -- I'm not sure  
15 that that's what we said. I think that we were  
16 not planning to mine, and I think the conclusion  
17 of the court was that there was mining that took  
18 place, and so then a lease is required. But  
19 that happened after the fact. So I don't see  
20 this as being conclusive to say that a lease or  
21 a permit or what have you is going to be  
22 required, because then even this is  
23 contradictory to what they said later -- in  
24 their later letter, when they went out there and  
25 they said, well, you need a permit.

1                   So, you know, I'm not sure that -- I  
2    don't believe that this is conclusive to  
3    indicate that you -- that you needed a lease,  
4    because I think the project maintained from the  
5    very beginning that no mining was going to take  
6    place.

7                   **Q    Okay.**

8                   A    And so (inaudible).

9                   THE REPORTER: I'm sorry. Could you  
10   repeat that?

11                  THE WITNESS: Oh, just that no mining --  
12    the project had maintained that there was no  
13    mining that was going to take place, and so  
14    there was no lease that was needed.

15                  **Q    (By Mr. Ashworth) Okay. So if -- it's**  
16    **your opinion that it has to be clear and certain**  
17    **that a lease is required before a lease should**  
18    **be obtained? If it is not clear, you believe**  
19    **it's completely fine for a reasonably prudent**  
20   **wind developer to move forward with a project**  
21   **without obtaining a lease?**

22                  MS. STEVENSON: Object to form.

23                  THE WITNESS: I think that you know your  
24    project is going to be the subject of due  
25    diligence, and you want to make sure that you've

1       taken all the proper steps. But I don't see  
2       anything in here that says that, you know, you  
3       have to have a -- because you're not planning to  
4       mine.

5                   So I don't see this as saying -- it  
6       says, to the extent that the project requires a  
7       lease or even a permit. So even in this letter,  
8       it's not really clear, you know, what it is that  
9       you're going to need to get. But the letter is  
10      simply saying that if you're going to -- you  
11      know, I'm not sure what it says. Okay.

12           Q    (By Mr. Ashworth) Okay. If a  
13      **reasonably prudent wind developer had received a**  
14      **letter indicating that they may or may not be**  
15      **required to get a lease pursuant to a federal**  
16      **regulation and that wind developer disagrees,**  
17      **would it not be incumbent upon a reasonably**  
18      **prudent wind developer to have gone through the**  
19      **administrative process with that regulatory**  
20      **authority to determine whether or not it was**  
21      **indeed required?**

22                   MS. STEVENSON: Object to form.

23                   THE WITNESS: Well, I think, as I  
24      understand it, the project did go through all  
25      the permitting and all the permitting

1 requirements, so I think this is not part of the  
2 permitting process, per se. So I think this  
3 falls out -- I -- you know, also, I'm looking at  
4 this out of context in relation to all the other  
5 material. I think you have to take all the  
6 other information together.

7 And it seems to me, if you look at all  
8 the different correspondence, that if this was  
9 the position of, you know, the tribe at the  
10 time, then they should have provided the lease.  
11 I don't believe that a lease was ever provided.  
12 I mean, I said, you know, even in the course of  
13 our, you know, curative negotiations, if an  
14 entity says, you know, you've got to have a  
15 non-disturbance agreement, then they send us the  
16 non-disturbance agreement. They say, here's our  
17 form, and even this says, so I'm --

18 Q (By Mr. Ashworth) I'm sorry. Is it  
19 your opinion that if the tribe took the position  
20 that a lease was required, it's -- they're  
21 required to give the lease to the wind  
22 developer? Is that what you're trying to say?

23 MS. STEVENSON: Object to form.

24 THE WITNESS: I would think that's what  
25 would happen, you know, I --

1           Q    **(By Mr. Ashworth)**   Okay.

2           A    I mean, I think it's -- I mean, again,  
3    you know, if you look at a lot of what's already  
4    been well established in the county, you know,  
5    these documents are not hidden, these forms are  
6    not hidden. They're pretty customary, they're  
7    pretty standard.

8                   So it seems to me that, if there was  
9    clarity around it's a permit, you know, you just  
10   send a permit and say, here you go, and, you  
11   know, get the permit filled out and get it back  
12   to us. But I don't see that happening here. I  
13   see this being kind of a discourse over, maybe  
14   if it's required, and if it is, you're going to  
15   have to follow this procedure.

16                  So, I mean, it doesn't seem to me that  
17    this is saying, a permit's required, here's your  
18    permit. You know, they clearly have the form.  
19    I mean, there's plenty of them out there. So  
20    I'm not sure why in this case they wouldn't have  
21    provided the form.

22                  Q    **Okay. So it's your testimony that**  
23   **because there was no clarity at the time as to**  
24   **whether or not a lease was required, it's your**  
25   **testimony, as an expert witness in the industry,**

1       **that it would have been completely reasonable**  
2       **and fine for a reasonably prudent,**  
3       **knowledgeable, and experienced wind developer to**  
4       **just move on without trying to determine or get**  
5       **clarity?**

6               MS. STEVENSON: Object to form.

7               THE WITNESS: I'm saying that if, in  
8       fact, a permit or a lease was required and it's  
9       well established in the county that there is  
10      many of them out there, that that would have  
11      been part of this letter, here you go, here's a  
12      permit, here you go.

13              **Q       (By Mr. Ashworth) Okay. We're talking**  
14       **about lease.**

15              A       Okay. Well, this says, "requires a  
16       lease or a permit," so, you know, I mean, I  
17       think later on they asked for a permit; right?  
18       So this says, "lease or permit." Later on they  
19       asked for a permit. I mean, this is kind of  
20       what I'm talking about. I guess as the project,  
21       you're supposed to get what they want. You  
22       know, I don't know.

23              This is why I -- I'm a little bit kind  
24       of confused about their requirements here. It  
25       seems to me that, yes, being the agency that

1     needs to issue whatever it is that needs to be  
2     issued, if it is a lease or if it's a permit,  
3     that that would be what they would send. Here's  
4     the document, and then it would be up to the  
5     project to say, no, we don't think we need a  
6     lease, we need a permit, or whatever.

7           Q     Okay. We have been going on for about  
8     an hour. Let's take about a five-minute break.

9           A     Thank you.

10           (Short break at 4:05 p.m., resumed at 4:12 p.m.)

11           Q     (By Mr. Ashworth) Ma'am, we're back on  
12     the record. We took a quick break. And is  
13     there anything that you would like to change  
14     about your previous testimony, that you'd like  
15     to do so now?

16           A     No.

17           Q     Okay. I'm going to look at your expert  
18     report and pull up Appendix A. It's page -- I'm  
19     going to look at Page 3 of Appendix A. It  
20     appears to me that Appendix A is a list of  
21     documents that were provided to you.

22           A     Sounds right, yes.

23           Q     Do you know if any that you -- scratch  
24     that.

25                   Do you know if you reviewed all of the

1 documents that were provided or that are listed  
2 in Appendix A?

3 A You know what? I'd have to go back and  
4 refresh my memory. I looked at a lot of them.  
5 I would have to go back and refresh my memory to  
6 say that I looked at every single one.

7 Q All right. Is it possible that you may  
8 have not looked at all of them?

9 A It's possible. This is a list of all  
10 the documents that were provided, so I focused  
11 on the documents that were pertinent to my  
12 report. And so I would have focused on those  
13 documents, so there may have been documents  
14 provided to me that I did not look at because  
15 they weren't pertinent.

16 Q Listed here kind of in the middle of the  
17 screen is some documents that says -- starts  
18 with JFWCO-Osage As-built. I have not -- do you  
19 know what these documents are?

20 A That is the as-built ALTA survey for the  
21 project.

22 Q This is an as-built for the subject  
23 project that was given to ALTA? Or was it --

24 A It's customary in these projects to  
25 prepare both a preconstruction and then post

1 construction survey that shows the location of  
2 all the improvements. So this particular survey  
3 was prepared by John Watson, and so it just  
4 depicts the location of all the improvements and  
5 all the property that comprises their project.

6 Q Okay. And this would have been pre and  
7 post project?

8 A This particular is an as-built, so I --  
9 I -- from my review, it looks to me like it's  
10 just post construction, so it shows everything  
11 post construction that -- from my high level  
12 review.

13 Q Did you rely upon any of the information  
14 contained in these ALTA as-builts for your  
15 opinion?

16 A I did not.

17 Q Okay. There was nothing that you  
18 noticed as being helpful for you to form your  
19 opinion; is that correct?

20 A I'm sorry. Say that again.

21 Q Sure. There's nothing within these  
22 as-builts, these ALTA as-builts that you believe  
23 were important for you to form your opinion?

24 A No, no, not necessarily.

25 Q Okay. Do you recall if anything within

1       **these ALTA as-builts that quantified the amount**  
2       **of minerals that were excavated?**

3           A     In the ALTA survey, no.

4           Q     I'm sorry. Is that a no, you don't know  
5       **if it --**

6           A     No.

7           Q     **-- included that information?**

8           A     Not quantified in the ALTA survey, that  
9       I saw. Not that I -- that I saw.

10          Q     **Okay.**

11          A     If it is, I didn't see it.

12          Q     **Ma'am, I'm going to -- well, scratch**  
13       **that.**

14               **Well, I'll also look -- the place where**  
15       **I was in my notes are not stapled. Give me one**  
16       **second.**

17               **Ma'am, do you know anything about**  
18       **Chapter 25 CFR Part 165.500? Have you ever**  
19       **heard of that?**

20          A     I'm not familiar with that, no.

21          Q     **It's leasing requirements for tribal**  
22       **lands as it relates to wind energy projects. Do**  
23       **you know anything about that now?**

24          A     I can't -- I can't say that I could tell  
25       you much about that, no.

1           Q    You have no recollections of ever being  
2 involved in a project where that -- leases under  
3 that section was undertaken; is that correct?

4           A    Well, I have -- I have no recollection  
5 of that specific provision. I'm -- I've not  
6 looked at it.

7           Q    Ma'am, I'm going to -- earlier --  
8 scratch that.

9                   Earlier you had testified in your --  
10 about your report. You had indicated that if a  
11 wind developer had been apprised of the  
12 necessity of a mineral lease prior to  
13 construction, it was your testimony that they  
14 would have considered more practical options; is  
15 that right?

16                MS. STEVENSON: Object to form.

17                THE WITNESS: I -- they would have  
18 looked at options, if they knew that they would  
19 have to get a mining lease, I think.

20           Q    (By Mr. Ashworth) Okay.

21           A    I think I would look at other options.

22           Q    And I think your testimony was more  
23 specific -- is that if they were aware that they  
24 needed a mineral lease but that the tribe -- or  
25 they were unable to get a mineral lease, you

1 believe that they would have considered other  
2 options or alternative options?

3 MS. STEVENSON: Objection to form.

4 THE WITNESS: I'm not sure if I said  
5 that, but I do know that if you -- if they would  
6 have known that they were going to have to get a  
7 mining lease, then I would think that they would  
8 have looked at other alternatives as to bringing  
9 the materials onto the site.

10 Q (By Mr. Ashworth) And it was your  
11 testimony that you don't know if the defendants  
12 actually looked at other alternative options at  
13 the time; is that correct?

14 A Well, I think -- was it Mary Kathryn put  
15 up an invoice from the project that actually  
16 showed that they did secure, you know, material  
17 from off the site? So I think we know that,  
18 according to that invoice. So I don't recall  
19 seeing that prior to this, but I think we know  
20 that, that they did actually acquire some  
21 material from off the site.

22 Q Sure. That -- I'm sorry. That purchase  
23 order did not -- it was for minerals. It's your  
24 testimony that that was brought in as a  
25 substitute for something? Is that your

1 **testimony?**

2 MS. STEVENSON: Object to form.

3 THE WITNESS: No, I'm not in the  
4 position to comment on that. I am merely saying  
5 that it appeared from that invoice that they did  
6 bring onto the site some other material. I  
7 presume it probably took less for the roads, but  
8 I don't know. I wasn't involved in the  
9 construction, so I don't know. But based upon  
10 my experience, I wouldn't be surprised, I think  
11 is what I said, that they would bring materials  
12 on the site. It frequently happens for the  
13 roads, that they --

14 Q **(By Mr. Ashworth) Okay.**

15 A -- have other material.

16 Q **Would it be your -- scratch that.**

17 **What would have been an alternative**  
18 **option in this case if a mineral lease was not**  
19 **-- was required and wasn't taken?**

20 A As far as constructing foundations are  
21 concerned relative to the limestone? Is that  
22 what you're asking?

23 Q **No. My question is as it relates to the**  
24 **minerals, the Osage minerals that were taken,**  
25 **what would have been the alternatives that the**

1       **defendants could have considered instead of**  
2       **taking and using those minerals?**

3                   MS. STEVENSON: Object to form.

4                   THE WITNESS: Well, I think you would  
5       probably do something similar to what they did  
6       to the road -- for the roads, but they would  
7       look at acquiring a resource from off the site  
8       and bringing that in. I mean, obviously, they  
9       knew in advance that they were going to need the  
10      material for the roads, so they contracted for  
11      that.

12                  So it seems to me if you knew in advance  
13      that you were going to need to replace the --  
14      this limestone or what have you in the turbine  
15      foundations, that you would have similarly  
16      contracted in advance in order to bring in some  
17      alternative minerals. And I think we said that  
18      there's other, you know, quarries and other  
19      facilities in the county, and I think we saw  
20      that evidenced by all the other permits; right?  
21      There's many other permits, or other  
22      developments for this kind of material that is  
23      readily available. So they would have been able  
24      to bring it in from some other source.

25                  Q      Okay. So it would be your testimony

1       **that one of the options would have been, instead**  
2       **of excavating the minerals and using them -- and**  
3       **using them, instead of using them, they could**  
4       **have just set them aside and brought in**  
5       **substitute fill?**

6           A    Yes.

7           Q    **As a way to negate the lease**  
8       **requirement?**

9           A    Right. I mean, and I -- because I said  
10      I've seen that happen in other cases where there  
11      were possibly similar requirements, you know,  
12      with not mixing, you know, topsoil, or for weed  
13      control, whatever it might be. And so you just  
14      take out that, you make special allowances for  
15      it, and then you bring in materials that, you  
16      know, meet the requirements, from another  
17      source.

18           Q    **And if the defendants had a question as**  
19      **to whether a lease was needed, why didn't they**  
20      **-- why did they choose -- or do you know why**  
21      **they chose to use Osage's minerals instead of**  
22      **getting substitute minerals?**

23           MS. STEVENSON: Object to form.

24           THE WITNESS: You know, I -- you know, I  
25      don't know. I can't put myself exactly in your

1   shoes, except that in my experience of  
2   construction, you know, you don't always know  
3   what you're going to get until you start with  
4   construction. So that may have been a factor  
5   here is, when they started the construction,  
6   then they encountered all this limestone so --

7 Q (By Mr. Ashworth) Okay.

8           A    The only thing I could think of. I  
9    don't know. I wasn't there when they made the  
10   decision.

11 Q I'm going to introduce another exhibit  
12 into the record. I believe it possibly was  
13 introduced in a previous deposition, but I'm not  
14 sure. I'm going to name it Exhibit Number 42.  
15 It's a change order form.

16 (Discussion off the record)

17 Q (By Mr. Ashworth) This would have done  
18 -- this change order -- first off, have you seen  
19 this before?

20 A No, I haven't. I have not.

21 Q Okay. Well, I would represent to you  
22 that this was a change order. At least based on  
23 the records, it appeared that it was done in  
24 August of 2014, that during the project certain  
25 specifications were called for, and then later

1 on it was determined that they needed to be  
2 updated. And this was what this change order  
3 would have been -- taken place. And I believe  
4 it's -- the contractor is asking for more money.

5 And this is part of the justification  
6 for the change. In there, in this paragraph in  
7 the middle of the page, I want to point at where  
8 it starts with, "Given the issue." I believe  
9 that's the fourth point, bullet point. "Given  
10 the issue with Osage Nation, the disposal of  
11 excavated rocks and import of backfill --  
12 backfilling material from outside the county was  
13 a more expensive solution."

14 Did I read that correctly?

15 A Yes.

16 Q So I guess my question before this was,  
17 if not using the minerals that were excavated,  
18 setting them aside and getting substitute  
19 materials from outside the project area, why was  
20 that not used? And based on this change order,  
21 it appears that that option or solution was not  
22 used because it was more expensive.

23 Would you have any reasons to disagree?

24 A You know what? I have not seen this  
25 change order before. I don't know the basis for

1 it, so it's hard for me to comment on the  
2 totality of it, just based upon that sentence.

3 Q Sure. It just appears that the  
4 defendants made a calculated decision as to  
5 whether to obtain the lease or not, and -- or go  
6 with some type of alternative. And they decided  
7 that the alternative would have been more  
8 expensive, and they went with using Osage's  
9 minerals.

10 MS. STEVENSON: Object to form.

11 Q (By Mr. Ashworth) Is your understanding  
12 of that different?

13 A Yeah, I think that's a stretch, from  
14 just reading that particular sentence. I mean,  
15 I think -- it seems to me that says from outside  
16 of the county. Well, it seems to me that -- I  
17 mean, I think we said that there's a lot of  
18 resources within the county.

19 So I'm not sure that I'm surprised by  
20 the fact that if they have to -- I don't know.  
21 This is a pretty big county, maybe. I'm not  
22 sure, but it seems to me that if you're going to  
23 have to go way outside of the county to try to  
24 find a replacement in any case, no matter what  
25 kind of project you're constructing, there's

1 going to be -- it's going to be more expensive;  
2 right? So I don't see that -- and I'm not sure  
3 that I draw the conclusion just based on that.  
4 I don't think --

5 **Q Sure.**

6 A -- it says anything about leasing. I  
7 think it just -- to me, I think, you know, it  
8 makes -- it makes sense. If you're going to  
9 have to go further, you know, in order to find a  
10 replacement, yeah, it's going to -- it's going  
11 to cost more. But, I mean, it -- so it kind of  
12 is what it is. But it's all --

13 **Q Uh-huh.**

14 A -- there.

15 **Q Sure. Have you ever heard of the**  
16 **saying, it's better to ask for forgiveness than**  
17 **to ask for permission?**

18 A Sure, yeah, I've heard of that.

19 **Q Have you ever ran across, in your**  
20 **experience in the industry, of a wind developer**  
21 **or renewable energy developer to proceed without**  
22 **permission with the expectation that it would be**  
23 **easier for them to ask for forgiveness**  
24 **afterwards?**

25 MS. STEVENSON: Object to form.

1                   THE WITNESS: Yeah, I -- you know,  
2 really? You know, how many wind developers are  
3 out there on how many projects? I -- I don't  
4 know, you know.

5                   **Q       (By Mr. Ashworth) I'm asking about your**  
6 **experience.**

7                   A       Oh, my experience. You know, I'm not  
8 aware of -- you know, I'm not aware of very many  
9 developers that would do that. You know, I  
10 suppose, on a case-by-case basis, but...

11                  **Q       And I'd say outside of the defendants,**  
12 **are you aware of any other developers who would**  
13 **do that?**

14                  MS. STEVENSON: Object to form.

15                  THE WITNESS: Yeah, I'm not even sure  
16 how to answer that, to be honest with you.

17                  **Q       (By Mr. Ashworth) How do you not know**  
18 **how to answer that? I mean, it's in your**  
19 **experience.**

20                  A       Well, it's -- you know, how many  
21 developers are going to take risks, and what  
22 kinds, and, you know, I'm not really sure. If  
23 you -- if you want to give me a scenario,  
24 perhaps. But, I mean, these projects are -- you  
25 know, most of the projects that we're working on

1 are very large scale projects. There's, you  
2 know, hundreds of millions of dollars to -- that  
3 can be at stake.

4 So you're asking me do the people that I  
5 work with and the clients that I cultivate, do  
6 they take that philosophy on their projects? I  
7 would say the answer is no. I don't -- I don't  
8 prefer to work with those kinds of people,  
9 because, you know, it flies in the face of doing  
10 the right thing and having integrity on  
11 projects. And in my experience, that never  
12 bodes well. So I would say I make it a habit of  
13 not working with those kinds of people.

14 Q Well, I think you answered my question  
15 with that, and I have nothing further.

16 MR. ASHWORTH: I pass the witness.

17 MS. STEVENSON: Thank you. I'd like to  
18 take a five-minute break just to confer with  
19 co-counsel to determine if defendants have any  
20 questions for this witness.

21 MR. ASHWORTH: Sure.

22 MS. NAGLE: Okay. That sounds good.  
23 Five-minute break.

24 (Short break at 4:32 p.m., resumed at 4:38 p.m.)

25 MS. STEVENSON: Defendants reserve

1       questions for this witness, so if we just -- we  
2       will read and sign the deposition.

3                   THE REPORTER: Reserve this witness  
4       what?

5                   MS. STEVENSON: We reserve our questions  
6       for this witness for future proceedings, and the  
7       witness will read and sign.

8                   MR. ASHWORTH: Does the OMC have any  
9       redirect?

10                  MS. NAGLE: We don't have any redirect  
11       at this time. Thank you.

12                  (Deposition concluded at 4:39 p.m.)

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1 JURAT

2 STATE OF OKLAHOMA )

3 )

4 COUNTY OF \_\_\_\_\_ )

5

6 I, KIMBERLEE CENTERA, do hereby state  
7 under oath that I have read the above and  
8 foregoing deposition in its entirety and that  
9 the same is a full, true and correct  
10 transcription of my testimony so given at said  
11 time and place, except for the corrections  
12 noted.

13

14

---

15 KIMBERLEE CENTERA

16 Subscribed and sworn to before me, the  
17 undersigned Notary Public, in and for the State  
18 of Oklahoma, by said witness, on this, the \_\_\_\_\_  
19 day of \_\_\_\_\_, 2021.

20

21

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22 NOTARY PUBLIC

23 My Commission Expires: \_\_\_\_\_

24 Job No. 150594

25 UNITED STATES vs. OSAGE MINERAL COUNCIL, et al.

1

ERRATA SHEET

2

DEPOSITION OF KIMBERLEE CENTERA

3

REPORTED BY: JANNA PIRTLE, CSR, RPR

4

DATE OF DEPOSITION TAKEN: MAY 14, 2021

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JOB FILE NO. 150594

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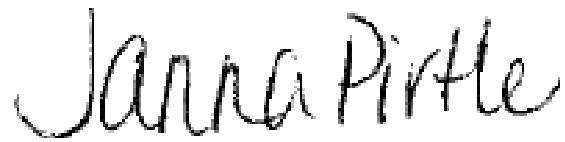
2 STATE OF OKLAHOMA )

3 )SS:

4 COUNTY OF OKLAHOMA )

5 I, JANNA PIRTLE, Certified Shorthand  
6 Reporter within and for the State of Oklahoma,  
7 do hereby certify that the witness was by me  
8 first duly sworn to testify the truth, the whole  
9 truth, and nothing but the truth in the case  
10 aforesaid, taken in shorthand to the best of my  
11 ability and thereafter transcribed; that the  
12 same was taken pursuant to stipulations  
13 hereinbefore set out; and that I am not an  
14 attorney for nor relative of any of said parties  
15 or otherwise interested in the event of said  
16 action.

17 IN WITNESS WHEREOF, I have hereunto set  
18 my hand and seal this 24th day of May, 2021.

19  
20   
21

22 Janna Pirtle, CSR, RPR

23 CSR No: 1815

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